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OFFICE OF COURT ADMINISTRATION

DAVID SLAYTON
Administrative Director

INTRODUCTION TO THE 2013 EDITION

To the County Clerks of Texas:

The *County Clerk Procedure Manual* is a reference guide covering the various duties, responsibilities and procedures of County Clerks in Texas. The 2013 edition is published under the direction of Judy Speer, Assistant General Counsel for OCA, and with the assistance of the 2013-2014 County Clerk Procedure Manual Committee noted below:

Nancy Rister, Williamson County (Chair)
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Laura Hughes, Kaufman County
Karen Vance, Orange County

The 2013 edition provides updates which include changes from legislation passed during the 83rd Legislature. This manual contains references to the Texas Constitution, Texas statutes, and opinions of the Texas Attorney General. The statutes and constitutional provisions can be accessed on the Texas Legislature's website at: www.statutes.legis.state.tx.us. Opinions of the Texas Attorney General can be accessed on the Texas Attorney General's website at: www.oag.state.tx.us/opin.

This manual is not published in hard copy, but is available at www.txcourts.gov/oca. Please feel free to contact Judy Speer by telephone at (512) 936-7061 or by e-mail at judy.speer@txcourts.gov with any questions concerning the manual.

David Slayton, Administrative Director

LEGAL SOURCE LEGEND

In this manual, references to specific legal sources are abbreviated as shown below:

ABBREVIATION	REFERENCE
A.G. Op.	Texas Attorney General Opinion
A.G. ORD	Texas Attorney General Open Records Decision
A.G. LO	Texas Attorney General Letter Opinion
Agric. Code	Texas Agriculture Code
Appr. Act	Appropriations Act
Alco. Bev. Code	Texas Alcoholic Beverage Code
Bus. & Com. Code	Texas Business and Commerce Code
CCP	Texas Code of Criminal Procedures
Civ. Prac. & Rem. Code	Texas Civil Practice & Remedies Code
Const.	Constitution of the State of Texas
Educ. Code	Texas Education Code
Elec. Code	Texas Election Code
EC	Texas Estates Code
Family Code	Texas Family Code
Gov't Code	Texas Government Code
Health & Safety Code	Texas Health & Safety Code
Hum. Res. Code	Texas Human Resources Code
Local Gov't Code	Texas Local Government Code
Nat. Res. Code	Texas Natural Resources Code
Occ. Code	Texas Occupations Code

ABBREVIATION	REFERENCE
OR	**Texas Attorney General Open Records Letter Rulings**
Parks & Wild. Code	**Texas Parks and Wildlife Code**
Penal Code	**Texas Penal Code**
Probate Code	**Texas Probate Code**
Prop. Code	**Texas Property Code**
SCR	**Texas Supreme Court Parental Notification Rules**
TRAP	**Texas Rules of Appellate Procedure**
TRCP	**Texas Rules of Civil Procedure**
TRJA	**Texas Rules of Judicial Administration**
TAC	**Texas Administrative Code**
Tax Code	**Texas Tax Code**
Transp. Code	**Texas Transportation Code**
VTCA	**Vernon's Texas Codes Annotated**
VTCS	**Vernon's Annotated Texas Civil Statutes**
USCA	**United States Code Annotated**

CHAPTER 1

OFFICE OF THE COUNTY CLERK

A. HISTORY AND GENERAL DUTIES OF THE COUNTY CLERK

The office of County Clerk has been in existence in Texas since 1836, superseding the *escribano* (secretary) of Spanish-Mexican rule. Article V, Section 20 of the Texas Constitution provides:

Const. Art. V, Sec. 20

Sec. 20. There shall be elected for each county, by the qualified voters, a County Clerk, who shall hold his office for four years, who shall be Clerk of the County and Commissioners Courts and recorder of the county, whose duties, perquisites and fees of office shall be prescribed by the Legislature, and a vacancy in whose office shall be filled by the Commissioners Court, until the next general election; provided, that in counties having a population of less than 8,000 persons there may be an election of a single Clerk, who shall perform the duties of District and County Clerks.

Local Gov't Code Sec. 81.024

The County Clerk:

- serves as Clerk for the county court, county courts at law and the county
- keeps records pertaining to the county courts, real and personal property, and personal records
- records vital statistics
- issues marriage licenses
- administers other licensing and recording requirements
- conducts countywide special and general elections and handles early voting

B. THE OFFICE OF THE COUNTY CLERK

1. Oath and Affirmation of Office

Const. Art. XVI, Sec. 1

County Clerks often assist other elected officials in executing the required statements and oaths before entering upon the duties of office. An elected officer (including the County Clerk), before entering upon the duties of office, must <u>first</u> subscribe to a statement of elected/appointed officer and <u>then</u> take the oath or affirmation of office.

<u>The statement</u>. The statement of elected/appointed officer, sometimes referred to as the anti-bribery statement, must be subscribed <u>before</u> the oath or affirmation of office is taken. The statement of elected/appointed officer is as follows:

Const. Art. XVI, Sec. 1(b)

> "I, _____, do solemnly swear (or affirm) that I have not directly or indirectly paid, offered, promised to pay, contributed, or promised to contribute any money or thing of value, or promised any public office or employment for the giving or withholding of a vote at the election at which I was elected or as a reward to secure my appointment or confirmation, whichever the case may be, so help me God."

The form and instructions concerning the execution of the statement are available from the Secretary of State's website at http://www.sos.state.tx.us/statdoc/forms/2201.pdf. Please note that this statement need not be executed in front of an officer authorized to administer oaths.

1 TAC Sec. 73.44

County, precinct and municipal officials (including the County Clerk) are to retain this signed statement with the official records of their office. However, state and district officers such as state senators, state representatives, district attorneys and district judges are to file the statement with the Secretary of State prior to taking the Oath or Affirmation of office (described below). The statement may be faxed to the Office of the Secretary of State which will consider the faxed copy as satisfying the filing requirement.

Const. Art. XVI, Sec. 1(c)

1 TAC Sec. 73.43

Oath and affirmation. After subscribing to (and, for certain officials, filing) the statement of elected/appointed official, elected officials (including the County Clerk) are to take the following Oath or Affirmation of office:

> "I, _____, do solemnly swear (or affirm), that I will faithfully execute the duties of the office of _____ of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God."

Const. Art. XVI, Sec. 1(a)

The form and instructions for completion of the oath are available from the Secretary of State's website at http://www.sos.state.tx.us/statdoc/forms/2204.pdf.

Some elected officials (including county commissioners, the county judge and the county auditor) must also swear in writing to additional language that is often added to the Oath or Affirmation above.

Local Gov't Code Sec. 81.002(a) Sec. 84.007

The County Clerk records his or her oath in the County Clerk's office and then deposits the oath in the District Clerk's office. The oath is generally printed on the bond the County Clerk must execute (*see* next section).

Local Gov't Code Sec. 82.001(d)

The County Clerk is required to record the oaths of certain other elected officials such as the tax assessor-collector. For more information on oaths or affirmations of office, please see the Texas Association of Counties' publication entitled "Outline of Official Oath and Bond Requirements." This publication is available on the Texas Association of Counties' website at http://www.county.org/member-services/legal-resources/publications/Documents/Outline-Of-Oath-Bond.pdf.

Tax Code Sec. 6.28(e)

2. Surety Bond Requirements

The County Clerk must, before beginning to perform the duties of office, execute a bond either with four or more good and sufficient sureties or with a surety company authorized to do business in the state as a surety. The bond must be:

Local Gov't Code Sec. 82.001

a. Approved by the commissioners court

b. Made payable to the county

c. Conditioned that the Clerk will faithfully perform the duties of office

d. In an amount equal to at least 20 percent of the maximum amount of the fees collected in any year during the term of office preceding the term for

which the bond is to be given, but not less than $5,000 or more than $500,000

After the official oath is taken and subscribe, it is endorsed on the bond. The bond and oath must be recorded in the County Clerk's office and deposited in the office of the Clerk of the district court.

Surety bonds for Deputy Clerks and other employees. If the County Clerk has only a single Deputy Clerk, the County Clerk must execute a surety bond to cover the Deputy. The County Clerk must execute a schedule surety bond or a blanket surety bond to cover all the Deputy Clerks, if there is more than one, and all other employees of the office.

Local Gov't Code Sec. 82.002

The bond covering a Deputy Clerk or an employee must be conditioned in the same manner and must be for the same amount as the bond for the County Clerk. The bond must be made payable to the county for the use and benefit of the County Clerk.

Self-insurance. In lieu of a Clerk obtaining a bond to cover the Clerk or a Deputy Clerk, the county may self-insure against losses that would have been covered by the bond.

Local Gov't Code Secs. 82.001(b) 82.002(b)

3. Errors and Omissions Insurance and Indemnification

The County Clerk must obtain an insurance policy or similar coverage from a governmental pool operating under Chapter 119, Local Government Code, covering the Clerk and each Deputy Clerk against liability incurred through errors and omissions in the performance of their official duties.

Local Gov't Code Sec. 82.003

The policy or other coverage must be in an amount equal to the amount of fees collected in the year before the policy is obtained. The policy or other coverage must be in an amount of at least $10,000 but is not required to exceed $500,000. If the policy or other coverage also covers other county officials, the policy or other coverage must be in an amount of at least $1 million.

Contingency fee and fund if required coverage unavailable. The commissioners court may establish a contingency fund to provide the coverage required if the Clerk determines that insurance coverage is unavailable at a reasonable cost. The commissioners court may set an additional filing fee in an amount not to exceed $5 for each suit filed to be collected by the County Clerk. The fee will be paid into the fund. When the contingency fund reaches an amount equal to that required for a bond, the Clerk must stop collecting the additional fee.

The commissioners court of a county is directed by law to pay out of the general fund of the county the premiums for a required bond or insurance policy.

Local Gov't Code Sec. 82.004

> *NOTE: AG Op. JM-1092 (1989) overrules the statements in AG Op. Nos. M-441 (1969) and MW-156 (1980) that the purchase of errors and omissions insurance coverage for a public officer or employee violates the Constitution unless it is part of compensation.*

AG Op. JM-1092 (1989)

Indemnification of County Clerks. The commissioners court by order may indemnify the County Clerk and Deputy County Clerks against personal liability for the loss of county funds, or loss or damage to personal property, incurred by them in the performance of official duties if the loss was not the result of the Clerk's or Deputy Clerk's gross negligence

Local Gov't Code Sec. 157.903

or criminal action.

4. Continuing Education Requirements

Before the first anniversary of the date the County Clerk assumes the duties of office, the County Clerk shall complete 20 hours of instruction regarding the performance of the Clerk's duties of office. The County Clerk must complete 20 hours of instruction regarding the performance of the Clerk's duties of office during each calendar year that begins after the first anniversary of the date a Clerk assumes the duties of office. The previous requirements concerning specific continuing education covering registry funds, fraudulent court documents and fraudulent document filings have been eliminated.

Gov't Code Sec. 51.605 HB 3314 (83rd Leg)

The principal continuing education courses currently offered in Texas include, among others:

1. County and District Clerks' Seminar, College Station-Texas A&M Extension Service, V. G. Young Seminar (January)
2. University of Texas School of Law Program, Austin (April)
3. County and District Clerks' Association of Texas Annual Conference (location varies) (June)
4. Elections Seminar, Austin (dates vary)
5. Vital Statistics Seminar, Austin (December)
6. Probate Seminar, sponsored by the Texas College of Probate Judges (location varies) (dates vary)
7. Regional Meetings, County and District Clerks' Association (check with Regional Directors in each Region for locations and dates)

The County and District Clerks' Association of Texas is composed of County and District Clerks as regular members and Clerks' office employees, former Clerks, and election administrators as associate members (*see* www.texasclerks.org). The Association holds an annual conference and area meetings and publishes a monthly newsletter.

5. Authentication by Seal

The County Clerk is required to "authenticate" the official acts of:

Gov't Code Sec. 26.005

1. County-level courts

Gov't Code Sec. 81.004(a)

2. The county commissioners court
3. The County Clerk as the county recorder

Local Gov't Code Sec. 191.001(b)

The term "authenticate" means to render authoritative or authentic through some legal formality. County Clerks authenticate a particular act by the legal formality of applying a seal to a written document that describes the act. Section 191.001(b), Local Government Code, requires that the County Clerk use the county court seal to authenticate all of the Clerk's official acts as county recorder. This section was amended in 2013 by HB 1728 to provide that the Clerk may affix the seal on an original document by stamp, electronic means, facsimile, or other means that legibly reproduces all of the required elements of the seal for the purposes of reproduction.

Black's Law Dictionary, 7th Ed., Pg. 127 HB 1728 (83rd Leg.)

a. Seals for County-Level Courts

Gov't Code Sec. 26.005(a) and (b)

The County Clerk is required to use the seal of the particular county-level court to authenticate the official acts of the County Clerk and the judge of the county-level court. The impress of the seal is to be attached to all processes other than subpoenas that are issued in the name of the county-level court.

Gov't Code Sec. 26.005(a)

The constitutional county court seal must contain a star with five points engraved in the seal's center. The words "County Court of _____ County, Texas" must be engraved on the seal.

Gov't Code Sec. 25.0011 Sec. 25.0031

The Clerk should not use the constitutional county court seal to authenticate the acts of statutory county courts and judges or statutory probate courts and judges.

Each statutory county-level court has its own seal. For example, a county with four statutory county courts must have a separate seal for each of the four statutory county courts. The seal must have the five-pointed star engraved in the seal's center as well as the name of the statutory county court (*e.g.*, "County Court at Law No. _____ of _____ County, Texas").

b. Separate Seal for the County Commissioners Court

Local Gov't Code Sec. 81.004(a)

Each county is required to have a commissioners court seal that is separate and distinct from the seal of the constitutional county court. The words "Commissioners Court, _____ County, Texas" must be engraved on the seal. The seal must also be engraved with a five-pointed star or a design selected by the commissioners court and approved by the Secretary of State.

Local Gov't Code Sec. 81.004(b)

The County Clerk keeps the commissioners court seal and uses the seal "to authenticate official acts of the court or its presiding officer or Clerk that requires a seal for authentication." The County Clerk serves as the Clerk of the county commissioners court.

c. Seal for the County Clerk's Acts as County Recorder

Local Gov't Code Sec. 191.001(b) HB 1728 (83rd Leg.)

The County Clerk is to use the constitutional county court seal to authenticate all of the Clerk's official acts as county recorder. The County Clerk may affix the seal on an original document by stamp, electronic means, facsimile, or other means that legibly reproduces all of the required elements of the seal for the purposes of reproduction.

C. APPOINTMENT OF DEPUTY CLERKS

Local Gov't Code Sec. 82.005

Deputy County Clerks must be appointed in writing by the County Clerk. A Deputy Clerk acts in the name of the County Clerk and may perform all official acts that the County Clerk may perform. The appointment must be signed by the County Clerk and must bear the seal of the county court. The County Clerk must record the deputation in the County Clerk's office and must deposit the deputation in the office of the District Clerk.

Upon appointment, Deputy County Clerks must subscribe to the statement of elected/appointed officer and must take the official oath or affirmation of office. The executed statement of elected/appointed official should be retained with the official records of the County Clerk's office. The executed official oath or affirmation of office should be recorded in the County Clerk's office and deposited in the office of the District Clerk.

Local Gov't Code Sec. 82.005(c) CCP Art. 2.22

Subsection (c) of Local Government Code Section 82.005 provides that a Deputy Clerk acts in the name of the County Clerk and may perform all official acts that the County Clerk may perform. Article 2.22 of the Code of Criminal Procedure provides that whenever a duty is imposed upon the Clerk of the district or county court, the same may be lawfully performed by his deputy.

CHAPTER 2

RECORDING AND FILING OF INSTRUMENTS

A. DOCUMENTS THAT ARE RECORDABLE "INSTRUMENTS"

Two types of documents are filed with the County Clerk: instruments and court documents.

Instruments are filed for recording and are generally public records such as deeds, liens and judgments. Many of these instruments deal with the conveyance of ownership in real property. This chapter deals with these instruments that are filed for recording.

Court documents are generally judicial records of the courts. They are usually filed but not recorded. However, the law does provide that the County Clerk "shall record each act and proceeding of the county court" (and statutory county courts at law). Thus, court documents that are signed by a judge should be file stamped and recorded.

Local Gov't Code Sec. 192.006

For purposes of discussion in this chapter, instruments filed in the County Clerk's office are primarily real property records and can be divided into four categories:

1. Deed records;
2. Deeds of trust;
3. Liens and abstracts; and
4. Miscellaneous records.

The County Clerk's office is also responsible for recording some birth certificates and death certificates; issuing marriage licenses; and, for issuing subsequent copies of such documents. This topic is addressed in Chapter 8 (Vital Statistics). Additionally, the County Clerk is required to file and create a record for certain financing statements. Chapter 7 (UCC Financing Statements) deals with this subject.

B. COUNTY CLERK'S DUTY AS COUNTY RECORDER

The Texas Constitution provides that County Clerk is to be elected in each county who shall be "recorder of the county." Various statutes, court opinions, and attorney general opinions detail the County Clerk's duty to serve as the county's recorder.

Const. Art. V, Sec. 20

As the county's recorder, the County Clerk performs four tasks with respect to each instrument that is presented for recording. The Clerk:

1. Determines whether the instrument will be accepted for filing;
2. Files the instrument;
3. Records/scans the instrument; and
4. Indexes the instrument.

1. Determining Whether the Instrument Will Be Accepted for Filing

a. General Provisions

AG LO 98-016 (1998)

The County Clerk's first task as recorder is to determine whether the instrument presented for filing and recording should be accepted. County Clerks have a ministerial duty to accept documents for filing and recording if a statute authorizes, requires or permits the document to be filed or recorded.

AG Op. JC-0156 (1999)

If no statute authorizes, requires or permits a document to be filed or recorded, the Clerk may not accept such a document. For example, unusual papers such as a "Refusal to Pay Property Taxes," a "Declaration of Person Being a Sovereign," a "Surrender of Social Security Card" and a "Declaration of Domestic Partnership" are not to be filed or recorded. If a Clerk is unsure regarding whether an unusual paper should be filed or recorded, the Clerk should consult the County Attorney and request a written opinion. Government Code Section 41.007 requires that a written answer be provided.

Gov't Code Sec. 41.007

Certain instruments may be recorded only if they are properly acknowledged or proved. If the instrument in question is not properly acknowledged or proved, the Clerk should not accept the instrument for filing and recording. County Clerks should be familiar with the rules regarding which instruments are required to be acknowledged or proved and what constitutes a proper acknowledgment or proof.

Civ. Prac. & Rem. Code Secs. 121.001-121.012

b. Real Property Documents

Instrument conveying real property. A County Clerk may not record an "instrument conveying real property" unless the instrument is (1) signed; and (2) acknowledged or sworn to by the grantor in the presence of two or more subscribing witnesses or (3) acknowledged or sworn to before and certified by an officer authorized to take acknowledgments or oaths. A notary public is the officer most often thought of as authorized to take acknowledgments, but other officers who may do so include County Clerks, District Clerks and judges of county courts.

Prop. Code Sec. 12.001(b)

Civ. Prac. & Rem. Code Sec. 121.001(a)

In order to acknowledge a written instrument before one of the officers listed above, the grantor must appear before the officer and state that he or she executed the instrument for the purposes and consideration expressed therein. The officer must then (1) make a certificate of the acknowledgment; (2) sign the certificate; and (3) seal the certificate with the certificate of office. Form II-1 sets out the language of an ordinary certificate of acknowledgment. Shorter alternatives to the ordinary certificate of acknowledgments also exist.

Civ. Prac. & Rem. Code Sec. 121.007 Sec. 121.008

Instrument concerning real property. An "instrument concerning real or personal property" may be recorded only if the instrument has been (1) acknowledged (in the manner described in the two foregoing paragraphs), (2) sworn to with a proper jurat, or (3) proved according to law. Form II-2 is the proper form for a jurat.

Prop. Code Sec. 12.001(a)

An acknowledgment and a jurat are not the same thing. "A jurat is a certificate added to an affidavit stating when, before whom, and where it was made, while an acknowledgment is a declaration of fact to give it legal validity."

AG Op. JM-883 (1988)

Electronic signature acceptable. When the law requires that a signature on a real property document be witnessed, acknowledged, notarized, verified, or made under oath, that requirement is satisfied if the electronic signature of a person authorized to perform the act is attached to or associated with the electronic document. (*see* Section C below).

Prop. Code Sec. 15.004(c)

Note also that an instrument relating to real or personal property may not be

Prop. Code Sec. 11.002

recorded unless the instrument is in English.

Confidential information in real property documents. A deed, mortgage, or deed of trust that transfers an interest in real property to or from an individual must include a confidentiality notice. The notice must appear at the top of the first page of the instrument, in 12-point boldfaced type or 12-point uppercase letters, and read substantially as follows:

Prop. Code Sec. 11.008

Prop. Code Sec. 11.008(b)

> **NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

Prop. Code Sec. 11.008(d) Sec. 11.008(e)

Despite this requirement, the Clerk may not reject the instrument for recording solely because it does not contain the confidentiality notice. The Clerk is required to post a notice in his or her office informing the public that instruments recorded in the real property or official public records do not need to contain a social security number or driver's license number, and that all such records are available for review by the public.

c. Specifications for Paper Documents to Be Filed

Local Gov't Code Sec. 191.007

The Legislature has set forth specifications for legal papers that are presented to a County Clerk for filing and recording. For example, a page of a legal paper must be no wider than 8 1/2 inches and no longer than 14 inches, must have a heading clearly identifying the type of document, and must be in at least 8-point type. If these specifications are not met, the County Clerk should accept the document. However, a filing fee of twice the regular filing fee can be charged for any page which does not meet the specifications. It is also possible that pages which are illegible, do not have names typed or printed under the signature, or are not suitable for reproduction may be rejected for insufficient recording fees. No fee is charged if the specifications for type size or headings are not met, provided the instrument complies with Property Code Section 11.008(b) and (c).

Prop. Code Sec. 11.003

A missing grantee's mailing address must also be on the document or an additional $25 may be charged.

Except as provided above, the Clerk may not impose additional requirements or fees for filing or recording.

2. Filing the Instrument

Jamar v. Patterson, 868 S.W.2d 318 (Tex. 1993)

Upon determining that an instrument should be accepted for filing, the County Clerk is to actually accept the instrument by taking physical possession of the instrument. At this point, the instrument is considered to be "conditionally filed." The Clerk should then collect the requisite filing fee for the Clerk's services in regard to the instrument (*see* Section F below for list of fees). The Clerk should also provide the filer with a receipt for the amount collected.

Local Gov't Code Sec. 118.011

AG Op. JC-0323 (2001)

Time of filing. Once the Clerk has actually accepted the instrument and the appropriate filing fee has been collected, the instrument is considered to be filed.

Local Gov't Code Sec. 193.001(b)

Evidence of the fact that the instrument was filed at a certain date and time is created by the County Clerk's statutorily required act of noting the date and time of filing "at the foot

of the record" (*i.e.*, at the end of the instrument). This is generally done by placing what is known as a "file stamp" or a "file mark" on the last page of the instrument. If the document was electronically filed, the Clerk may note on the first page of the instrument the recording information, including the date and time. The County Clerk should file stamp the instrument immediately upon the filing of the instrument. Each instrument is assigned a unique number which is stamped or written on the original instrument for the purpose of identification.

AG Op. JC-0323 (2001)

An instrument is considered to be a public record at the time the instrument is filed, not the later time at which the instrument is actually recorded and/or scanned and indexed.

Brooks, Texas Practice,§10.9

The County Clerk must make a record of (1) the names of the parties to the instrument in alphabetical order; (2) the date of the instrument; (3) the nature of the instrument; and (4) the time that the instrument was filed. This record will also usually contain the unique number assigned to the instrument and a notation as to who filed the instrument. Generally, the Clerk must provide the filer a receipt containing the same information. The Clerk then maintains physical possession of the instrument.

Local Gov't Code Sec. 193.001(c)

File register book. After the instrument is recorded and indexed (see below) the County Clerk shall return the instrument to the filer. The date of the instruments return as well as the identity of the person to whom the instrument is returned is usually added to the record at the time the instrument is returned. This record is generally made part of a Clerk's "file register book" that contains all such records in the order in which they were filed for recording. The file register book thus serves as the Clerk's master list of all instruments that have been filed for recording.

3. Recording the Instrument

The County Clerk should record, exactly, without delay, the contents of each instrument that is filed for recording, including any acknowledgment, proof, affidavit, or certificate that is attached to it. The Clerk must record instruments in the order that the instruments are filed.

Local Gov't Code Sec. 191.001(c) Sec. 193.001(a)

Time of recording. An instrument is deemed to be recorded at the time the instrument is filed even though the instrument is actually recorded/scanned and indexed at some time after the instrument is filed.

Local Gov't Code Sec. 191.003

There are three steps to the actual recording of an instrument:

AG Op. O-637 (1939)

1. The instrument (and any acknowledgment, proof, affidavit or certificate attached thereto) may be copied or scanned. Instruments are copied so that the original instrument may be returned to the person who filed the instrument.

Local Gov't Code Sec. 193.012

2. The copy of the instrument must be placed in some sort of storage medium. Traditionally, this storage medium has been a "suitable well-bound book." With the advance of technology, however, there are two additional storage media of which County Clerks may take advantage. One of these alternative storage mediums is microfilm. For some time now, Texas law has provided that any local government record may be maintained on microfilm in addition to or instead of being maintained on paper. The other alternative storage medium is electronic storage. Any local government record data may be stored electronically in addition to or instead of being stored on paper.

Local Gov't Code Sec. 191.002 Sec. 204.002 Sec. 205.002

3. Upon placing the copy of the instrument in the chosen storage medium, the County Clerk must certify, under the Clerk's signature and county court seal, the date and time that the instrument is recorded as well as the specific location in the records where the instrument is recorded. This certification (*see* Form II-3) is usually located in the storage medium following the relevant document. If the storage medium is a book, the Clerk will generally specify the volume number of the book in which the instrument is filed as well as the page number (or numbers) of the volume in which the instrument is recorded. Historically, the Clerk will have separate books for different types of instruments (*e.g.*, one book for deeds and another book for deeds of trust), but may have combined the records into the county's Official Public Records.

Local Gov't Code Sec. 193.001(d) Sec. 191.001(b)

Local Gov't Code Sec. 193.008(d)

Note: Electronically recorded and stored instruments may only have the one unique instrument number with the recording date, time, clerk's name and signature and with the name of the database where it is recorded such as Official Public Records.

4. Indexing the Instrument

For every type of instrument that the County Clerk records, he or she must maintain an index so that copies of individual instruments may be located. Unless the Clerk is maintaining instruments on microfilm (*see* Section 198.008 of the Government Code for special rules in regard to the indexing of microfilmed instruments) or in a digital format, or the documents have been scanned, the Clerk must maintain at least one index for real property instruments and another index for all other instruments. Individual instruments are indexed alphabetically by the last name of the parties. The index must state the specific location in the records at which the instrument is stored. Many clerks have combined all of their records into one database, such as Official Public Records, from which any filed instrument may be retrieved.

Local Gov't Code Sec. 193.003 Sec. 193.005

Bus. & Com. Code Sec. 71.154(a)

Many instruments are known as two-party instruments (*e.g.* a deed that reflects both a grantor and a grantee). These instruments must be indexed in two ways: alphabetically by grantor name and alphabetically by grantee name. This second index is known as a cross-index. With these two indices, a recorded deed can be located where only the name of the grantor or the grantee is known.

Generally, the County Clerk shall return the original instrument (along with a copy of the Clerk's certification) to the filer after the recorded instrument has been indexed. In the case of certain instruments (*e.g.*, official oaths and bonds), the Clerk is to record and keep the original instrument instead of a copy.

Local Gov't Code Sec. 193.001(d) Sec. 88.001 Sec. 193.012

If records are maintained only on microfilm for use by the public, they must be indexed and must conform to the following seven categories:

1. Records relating to real property knows as "Official Public Records of Real Property";
2. Records relating to receivables, chattels, and personal property known as "Official Public Records of Personal Property and Chattels";
3. Records relating to probate matters, known as "Official Public Records of Probate Courts";
4. Records relating to county civil court matters, known as "Official Public Records of County Civil Courts";

Local Gov't Code Sec. 193.008

Local Gov't Code Sec. 193.009

5. Records relating to county criminal court matters, known as "Official Public Records of County Criminal Courts";
6. Records relating to matters in the commissioners court, known as "Official Public Records of Commissioners Court"; and
7. Records relating to an individual, a business entity, or a governmental agency, other than a property record or a court record, known as "Official Public Records of Governmental Business and Personal Matters."

The Clerk may consolidate categories 1 and 7 into a single class known as Official Public Records. *Local Gov't Code Sec. 193.008(d)*

If the County Clerk does not choose to maintain records on microfilm, the Clerk may still divide instruments received for filing, registering, and recording into these seven classes of records. *Local Gov't Code Sec. 193.002(a)*

C. ELECTRONIC FILING OF REAL PROPERTY RECORDS

Documents eligible to be recorded in the real property records may now be filed for recording electronically under the provisions of the Uniform Real Property Electronic Recording Act. (The Act appears to overrule AG Op. GA-228 (2004).) *Prop. Code Chapter 15*

The requirement that a document must be an original and/or be in writing is satisfied by an electronic document. An electronic signature satisfies a requirement that a document must be signed. *Prop. Code Sec. 15.004*

A requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed or made under oath is satisfied if the electronic signature of the person authorized to perform such act is attached to or logically associated with the document. It is not necessary for the authorized person's stamp, impression or seal to be part of the electronic document.

A County Clerk who accepts documents electronically shall continue to accept paper documents. The Clerk may receive, index, store, archive, and transmit electronic documents. He or she may provide access to and search of documents by electronic means, and may convert paper documents to electronic documents. *Prop. Code Sec. 15.005*

The Texas State Library & Archives Commission adopted rules governing electronic filing in 2000, as required under Local Government Code Section 195.002. These rules remain in force and govern the implementation of Property Code Chapter 15. *13 TAC §7.141 et seq.*

Only those persons authorized under Local Government Code Chapter 195 may file documents electronically for recording. These are: *Local Gov't Code Sec. 195.003*

- Attorney licensed in Texas;
- Bank, savings and loan association, or credit union;
- Federally chartered lending institution, a federal government-sponsored entity, an instrumentality of the federal government, or a person approved as a mortgagee by the United States to make federally insured loans;
- Person licensed to make regulated loans in Texas;
- Title insurance company or agent licensed to do business in Texas;
- Municipal clerk *SB 1437 (83rd Leg.)*

- In a county with a population of 500,000 or more, the county may authorize a person to file documents electronically for recording with a county clerk if the county enters into a memorandum of understanding with the person for that purpose; or
- State agency.

Local Gov't Code Sec. 195.003(b) Sec. 195.006 13 TAC §7.142

The fee to file or record an electronic document or other instrument electronically is the same as the fee for filing or recording the instrument by other means, and a County Clerk may not charge an additional fee for filing or recording an instrument electronically under this chapter.

D. TYPES OF INSTRUMENTS FILED IN THE COUNTY CLERK'S OFFICE

As noted, the primary types of instruments filed in the Clerk's office are deed records, deeds of trust, liens and abstracts and miscellaneous instruments. This section offers more detail on each of these types of instruments.

1. Deed Records

More instruments can be categorized as deed records than as anything else. Any instrument affecting title to real estate can be categorized as a deed record.

Some instruments (such as a deed) are clearly related to real property. Other instruments (such as a power of attorney) are not so clearly related to real property. The connection between a power of attorney and real property, for example, is that a power of attorney may include the right to take an action in regard to real property.

Instruments that can be categorized as deed records include the following:

Trustee's deed	Right-of-way deed
Cemetery deed	Royalty deed
General warranty deed	Special warranty deed
Quitclaim deed	Sheriff's deed
Tax deed	Affidavit (various types)
Homestead designation	Agreement (various types)
Power of attorney	Revocation of power of attorney
Removal of the disabilities of a minor	Appointment of trustee
Resignation of trustee	Conveyance of lien
Subordination of lien	Release of lien
Release (various types)	Partial release (various types)
Lease	Easement
Contract of sale	Bill of sale
Trust indenture	Certified copy of divorce decree
Certified copy of probate proceedings	Gas lease
Oil lease	Option (various types)
Extension (various types)	Deed restrictions
Rental division	

Because deed records are related to real property, they are to be filed and recorded in the county where the real property is located.

2. Deeds of Trust

A deed of trust is a deed conveying title to real property to a trustee as security until the grantor repays a loan. In Texas, deeds of trust are used as mortgages on real estate. Traditionally, deeds of trust have been recorded separately from deeds, but the law no longer requires such a separation.

Black's Law Dictionary, 7th Ed., p. 423

If a County Clerk divides instruments into the seven classes of records used by Clerks who maintain records on microfilm, then deeds of trust should be recorded in the Official Public Records of Real Property (*see* Section B. 4. above)

If the borrower under the deed of trust fails to repay the loan, the real estate on which the loan was made may be sold under the powers conferred by a deed of trust. These real estate sales are to be made in the county where the real estate is situated.

Prop. Code Sec. 51.002

HB 584 (83rd Leg.)

County Clerks play a key role in these sales. Notice of each sale must be given at least 21 days before the date of the sale. These notices are to be posted at the courthouse door and are to be filed in the office of the County Clerk. In 2013, HB 584 amended the Property Code to require a county that maintains an Internet website to post notice of a public foreclosure sale on the website. County Clerks are required to keep all notices of sale in a convenient file that is available to the public for examination during normal business hours. The Clerk may dispose of the notices after the date of sale specified in the notice has passed. The Clerk is to receive a fee of $2.00 for each notice that is filed. Notice must also be sent to each debtor by the mortgage servicer of the debt. HB 1127 and SB 101 (82nd Legislature) added, effective 1/1/2012, a new Subsection (i) to Section 51.002. Although the language is slightly different in each bill, the primary new requirement was that notice served under Subsection (b)(3) or (d), or upon a debtor under Section 51.002, must now contain a statement that is conspicuous, printed in boldface or underlined type, similar to the following: "Assert and protect your rights as a member of the armed forces of the United States. If you are or your spouse is serving on active military duty, including active military duty as a member of the Texas National Guard or the Nation Guard of another state or as a member of a reserve component of the armed forces of the United States, please send written notice of the active duty military service to the sender of this notice immediately."

Prop Code Section 51.002(i)

The commissioners court is to designate the area at the courthouse where the sales are to take place. The commissioners may designate a sale area other than an area at the courthouse, provided it is within reasonable proximity to the courthouse and is accessible to the public. Sales must occur in the designated area. This designation is to be recorded in the county's real property records. Notices must still be posted at the courthouse door. In 2013, HB 699 amended the Civil Practice and Remedies code, the Property Code, and the Tax Code to establish provisions regarding the designation of alternate locations for certain public sales of real property involving contract liens or tax delinquency.

Prop. Code Sec. 51.002(a) Sec. 51.002(h)

HB 699 (83rd Leg.)

SB 1233 (82nd Legislature) added Section 51.0022 to the Property Code. This new section became effective 6/17/11. The new section provided for foreclosure data collection. In 2013, Senate Bill 109 repealed Section 51.0022 of the Property Code.

SB 109 (83rd Leg.) Prop. Code Sec. 51.0022 (repealed)

3. Liens and Abstracts

a. Liens in General

A lien is an instrument evidencing a legal interest that a creditor has in a debtor's property. A lien generally lasts until a debt that the lien secures is satisfied. Typically, the creditor does not take possession of the property on which the lien has been obtained. Traditionally, liens have been filed separately from the deed records. This is no longer required but is still the practice. If a Clerk divides instruments into the seven classes of records used by Clerks who maintain records on microfilm, then liens on real property should be recorded in the Official Public Records of Real Property while liens on personal property should be recorded in the Official Public Records of Personal Property and Chattels. (*see* Section B. 4. above).

Black's Law Dictionary, 7th Ed., p. 933

Types of liens**.** There are many different types of liens. Some of the more common types of liens are listed below:

- Mechanic's lien (Contractor's Lien, Materialman's Lien) — *Prop. Code Sec. 53.001*
- Landlord's lien — *Chapter 54*
- Hospital lien — *Chapter 55*
- Mineral Contractor's lien — *Chapter 56*
- Broker's and appraiser's lien on commercial real estate — *Chapter 62*
- State tax lien — *Tax Code Chapter 113*
- Federal lien — *Prop. Code Chapter 14*
- Child support lien — *Family Code Secs. 157.314-331*

Sometimes, the statutory provisions associated with each type of lien provide specific direction to County Clerks on how to handle the particular type of lien. More detail on some of these liens and corresponding County Clerk procedures is set forth in part b (Liens - Specific Direction to County Clerks) below.

Release of lien. A common instrument filed and recorded in County Clerk's offices is the "Release of Lien." These releases are to be recorded in the deed records. HB 1456 (82nd Legislature) added, effective 1/1/2012, a new Subchapter L to the Property Code. This new Subchapter deals with waivers and releases of liens or payment bond claims. It will make any waiver and release of a lien or payment bond claim under Chapter 53 unenforceable unless a waiver and release is executed and delivered in accordance with the new provisions.

Prop. Code Sections 53.281-53.287

b. Liens – Specific Direction to County Clerk

Mechanic's Lien. A mechanic's lien is a statutory lien (*i.e.*, a lien arising by the force of statute and not by an agreement of the parties) that secures payment for labor or materials supplied in constructing and repairing real property. HB 1456 (82nd Legislature) amended 53.021 (d) to add contractors and subcontractors to the list of persons who may have a lien on property under that subsection. In order to perfect the lien, a person must file an affidavit with the County Clerk of the county in which the property is located not later than the 15th day after the fourth calendar month after the day on which the indebtedness accrues. The County Clerk is to record the lien and cross-index the affidavit in the names of the claimant, the original contractor and the owner.

Prop. Code Sec. 53.021 Sec. 53.021(d) Sec. 53.051 Sec. 53.052

A mechanic's lien does not affect any lien, encumbrance or mortgage on the land or improvement at the "time of inception" of the mechanic's lien. Often, in order to establish the time of inception of a mechanic's lien, an owner and original contractor will file an

Prop. Code Sec. 53.123 Sec. 53.124

"affidavit of commencement" with the County Clerk. There is no requirement to record this affidavit.

Prop. Code Secs. 53.171-53.174

If a lien is fixed by the recording of an instrument, any person may file a bond with the County Clerk to indemnify against the lien. Specific bond requirements (including the necessary amount of the bond) are detailed in Section 53.172 of the Property Code. After the bond is filed, the County Clerk shall issue notice of the bond (with a copy of the bond attached) to each obligee via certified mail. The County Clerk is then required to record the bond, the notice, and a certificate of mailing in the real property records. The certificate of mailing is essentially an affidavit stating that the Clerk mailed the notice of the bond (along with the attached bond) to the recipient stated on the notice on a particular date via certified mail return receipt requested. The notice of the bond and the bond itself should be attached to the certificate. Ideally, a copy of the return receipt should be attached as well.

Please note that the Clerk is to record two separate documents. First, the Clerk is to record the bond itself. Second, the Clerk is to record the certificate of mailing with the notice of the bond and the bond itself attached. The return receipt should be attached to this second document.

Prop. Code Sec. 53.021 Sec. 53.203

An original contractor who has a written contract with the owner may furnish a bond for the benefit of claimants. If a valid bond is filed, a claimant may not file suit against the owner or the owner's property and the owner is relieved of certain obligations. The bond and the contract (or a copy of the contract) between the original contractor and the owner must be filed with the County Clerk of the county in which is located all or part of the owner's property on which the construction or repair is being performed or is to be performed. The County Clerk shall record the bond and place the contract on file in the Clerk's office and shall index and cross-index both in the names of the original contractor and the owner in records kept for that purpose. On request and payment of a reasonable fee, the County Clerk shall furnish a copy of the bond and contract to any person.

Prop. Code Sec. 53.157

A mechanic's lien may be discharged of record by:

- Recording a lien release signed by the claimant;
- Effective 1/1/2012, all requirements of new Chapter 53, Subchapter L must be met; *HB 1546 (82nd Leg)*
- Failing to institute suit to foreclose the lien in the county in which the property is located within the legally prescribed period;
- Recording the original or a certified copy of a final judgment or decree of a court providing for the discharge;
- Filing the bond, notice and return in compliance with subchapter H of Chapter 53 of the Property Code; or
- Filing the bond in compliance with subchapter I of Chapter 53 of the Property Code.

Prop. Code Sec. 54.021 Sec. 54.022

Landlord's Lien. A person who leases or rents all or part of a building for nonresidential use has a preference lien on the property of the tenant for rent that is due and for rent that is to become due during the 12-month period succeeding the date of the beginning of the rental agreement or the anniversary of that date. The lien is unenforceable for rent on commercial buildings that is more than six months past due, however, unless the landlord files a lien statement with the County Clerk of the county in which the building is located. The County Clerk must index alphabetically and record the rental lien statements

filed in the Clerk's office.

Hospital Liens. A hospital has a lien on a cause of action or claim of an individual who receives hospital services for injuries caused by an accident that is attributed to the negligence of another person. To secure the lien, the hospital must file written notice of the lien with the County Clerk of the county in which the injury occurred and must provide notice to the injured individual in accordance with Section 55.005(d). The County Clerk shall record the name of the injured individual, the date of the accident, and the name and address of the hospital. The County Clerk shall index the record in the name of the injured individual. An emergency medical services provider has a lien on a cause of action or claim of an individual who receives emergency medical services in a county with a population of 800,000 or less for injuries cause by an accident that is attributed to the negligence of another person. For the lien to attach, the individual must receive the emergency medical services not later than 72 hours after the accident.

Prop. Code Sec. 55.002 Sec. 55.005

Sec. 55.005(a), (d), (e), (f), and (g)

Prop. Code Sec. 55.002(c)

Mineral Contractor's Lien. A mineral contractor has a lien to secure payment for labor or services related to mineral activities. The lien is secured when the person claiming the lien files an affidavit with the County Clerk not later than six months after the day the indebtedness accrues.

Prop. Code Sec. 56.002

Broker's and Appraiser's Liens on Commercial Real Estate. A broker has a lien on a seller's or lessor's commercial real estate interest in the amount specified by the commission agreement if the broker has earned a commission under a signed commission agreement and a notice of lien is recorded and indexed as provided by Section 62.024 of the Property Code. That section requires a broker claiming a lien to file a notice of lien with the County Clerk of the county in which the commercial real estate is located. The County Clerk shall record the notice of lien in the records kept for that purpose and shall index and cross-index the notice of lien in the names of the broker, each person obligated to pay the commission under the commission agreement, and each person who owns an interest in the commercial real estate if the broker claims a lien on that interest.

Prop. Code Sec. 62.021 Sec. 62.024

If a lien is fixed or is attempted to be fixed by a recorded instrument, any person may file a bond to indemnify against the lien. The bond must be filed with the County Clerk. After the bond is filed, the County Clerk shall issue notice of the bond (with a copy of the bond attached to the notice) to all obligees. The notice must be served on each obligee by mailing a copy of the notice and the bond to the obligee by certified mail, return receipt requested, addressed to the claimant at the address stated in the bond for the obligee. The County Clerk shall record the bond, the notice, and a certificate of mailing in the real property records.

Prop. Code Sec. 62.123

State Tax Liens. All taxes, fines, interest and penalties due by a person to the state are secured by a state tax lien on all of the person's property that is subject to execution. The comptroller issues and files a state tax lien notice with the County Clerk. This tax lien notice may be issued by the comptroller with a facsimile signature and seal. Upon receipt of a tax lien notice, the County Clerk must immediately:

Tax Code Sec. 113.001 – 113.003

- Record the notice in what is known as the state tax lien book;
- Note on the notice the date and hour of its recording;
- Enter in an alphabetical index the name of each person to whom the notice applies, along with the volume and page number of the state tax lien book where the notice is required;

Tax Code Sec. 113.004 & 113.005

- Furnish to the comptroller, on a form prescribed by the comptroller, a notice showing that the tax lien notice is recorded and filed, the date and hour of its recording and filing, and the volume and page number of the state tax lien book where the lien is recorded; and
- After receiving the form, the Comptroller sends a check through the Texas Workforce Commission for payment.

A state tax lien release should be filed in the County Clerk's office in the same manner that other releases are filed. Upon the filing of a release, the County Clerk is to release the state tax lien in accordance with the regulations of the Clerk's office. The County Clerk may send the comptroller a statement of the customary fee due for the filing and indexing of the release of the tax lien notice.

Tax Code Sec. 113.009

Federal Tax Lien. Notices of liens on real property for obligations payable to the United States are filed by the federal government in the office of the County Clerk in the county in which the real property subject to the liens is situated. Notices of liens on personal property for obligations payable to the United States are also filed in the County Clerk's office of the county in which the person against whose interest the lien applies resides at the time of the filing of the notice of lien. However, in the case of personal property, if the "person" in question is a corporation or a partnership, then the notice of lien is filed with the Secretary of State and not with the County Clerk.

Prop. Code Sec. 14.002

Certification of a notice of lien by an official or entity of the United States entitles the notice of lien to be filed and no other attestation, certification or acknowledgment is necessary.

Prop. Code Sec. 14.003

Upon receipt of a federal tax lien notice, a County Clerk should:

Prop. Code Sec. 14.004(a)(2)

1. Endorse his or her identification on the notice;
2. Note the date and time the notice was received; and
3. File the notice alphabetically in the real property records (if the lien is on real property) or the personal property records (if the lien is on personal property).

As an alternative to the three-step procedure set out above, the Clerk may enter the notice in an alphabetical index for real property (if the lien is on real property) or for personal property (if the lien is on personal property) where the index shows:

- the name and address of the person named in the notice;
- the date and time the notice was received;
- the title and address of the official or entity certifying the lien; and
- the total amount appearing on the notice of lien.

Although the Clerk has implied authority to file a federal tax lien notice without first receiving the appropriate filing fees, the IRS now send payment for recording the Notice of Federal Tax Lien Notices by direct deposit to all clerks so that the documents are matched up with the payment and recorded when payment is received.

AG Op. MW-396 (1981)

Upon request, the County Clerk must issue a certificate showing whether any federal tax lien notice naming a particular person is on file. Section 14.004 of the Property Code was amended effective September 1, 2009.

Prop. Code Sec. 14.004

Property Code Section 14.004(d) now states:

Prop. Code Sec. 14.004(d)

(d) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file, on a date and time specified by the filing office, but not a date earlier than three business days before the date the filing office receives the request, any notice of lien or certificate or notice affecting any lien filed under this chapter or filed under the Uniform Federal Tax Lien Registration Act (Subchapter C, Chapter 113, Tax Code) on or after January 1, 1972, naming a particular person, and if a notice or certificate is on file, giving the date and hour of filing of each notice or certificate. The amount of the fee for a certificate is the same as the amount of the fee provided by Section 9.525(d), Business & Commerce Code. Upon request, the filing officer shall furnish a copy of any notice of federal lien. The fee for a copy furnished under this section is in the amount provided by Section 405.031, Government Code.

Prop. Code Sec. 14.004(e)C

Also effective September 1, 2009, is new Subsection (e). This new subsection provides that Section 9.523 of the Business & Commerce Code applies to a federal lien filed under this chapter.

Family Code Sec. 157.312

Child Support Liens. A child support lien arises by operation of law against the real property and personal property of a child support obligor (a person who is required to pay child support). The lien is for all amounts of child support due and owing.

Family Code Sec. 157.314 Sec. 157.315

A child support lien notice may be filed by the claimant with the County Clerk of:

1. any county in which the obligor is believed to own nonexempt real or personal property;
2. the county in which the obligor resides; or
3. the county in which the court having continuing jurisdiction has venue of the suit affecting the parent-child relationship. Upon receipt of a child support lien notice, the County Clerk must immediately record the notice in the county judgment records. The County Clerk may not charge a fee for recording a child support lien notice or for recording the release of a child support lien.

c. Abstracts of Judgment

Prop. Code Sec. 52.001

Donley v. Youngstown Sheet & Tube Co., 328 S.W.2d 192 (1959)

An abstract of judgment is a public notice that a legal judgment has been rendered against a person. An appropriately recorded and indexed abstract of judgment constitutes a lien (known as a "judgment lien") on the real property of the defendant located in the county in which the abstract is recorded and indexed. The lien covers real property owned by the defendant before the judgment is recorded and indexed as well as real property acquired after the recording and indexing of the judgment. Judgment liens do not attach to personal property.

Prop. Code Sec. 52.004

The County Clerk records abstracts of judgment in the county real property records immediately upon the presentation for recording of an abstract of judgment that is properly authenticated. If a County Clerk divides papers into the seven classes of records used by Clerks who maintain records on microfilm (*see* Section B. 4. above), the Clerk should record abstracts of judgment in the Official Public Records of Real Property. The Clerk should note the date and hour that an abstract of judgment is received.

When the Clerk records an abstract of judgment, the Clerk should also enter the abstract on the alphabetical index to the real property records, showing: (1) the name of each plaintiff in the judgment; (2) the name of each defendant in the judgment; and (3) the

volume and page or instrument number in the records in which the abstract is recorded.

Prop. Code Sec. 52.002

The Clerk is also required, upon request, to prepare, certify and deliver abstracts of judgment. A person in whose favor a judgment is rendered or that person's agent, attorney or assignee, may prepare the abstract of judgment himself or herself, however. If the Clerk prepares the abstract of judgment, the applicant for the abstract of judgment must pay the Clerk the fee authorized by law for providing the abstract.

Prop. Code Sec. 52.003

An abstract of judgment must show:

- Names of the plaintiff and defendant;
- Birth date and last three numbers of the driver's license number of the defendant, if available to the Clerk;
- Number of the suit in which the judgment was rendered;
- Defendant's address, or if the address is not shown in the suit, the nature of citation and the date and place of service of citation;
- Date on which the judgment was rendered;
- Amount for which the judgment was rendered and the balance due;
- Amount of the balance due, if any, for child support arrearage; and
- Rate of interest specified in the judgment.

Prop. Code Sec. 52.0041

An abstract of judgment may not be recorded unless: (1) a mailing address for each plaintiff or judgment creditor appears on the abstract of judgment; or (2) a penalty filing fee equal to the greater of $25 or twice the statutory recording fee for the abstract is paid. The validity of an abstracted judgment as between the parties is not affected by a failure to include an address for each plaintiff or judgment creditor in the abstract of judgment.

Prop. Code Sec. 52.005

The Clerk also records the satisfaction of a judgment.

AG Op. JM-1029 (1989)

> ***NOTE:*** *The requirement of Section 12.013 of the Property Code that a judgment be attested under the signature and seal of the Clerk of the court that rendered judgment prior to recordation does not apply to abstracts of judgment.*

4. Miscellaneous Records

a. Official Bonds

Local Gov't Code Sec. 88.001 Sec. 193.005

Most county officials are required to execute a bond before undertaking the duties of office. County officers who are required to execute a bond that must be approved by the commissioners court must, except as required by other law, have their bond kept and recorded by the County Clerk. The Clerk may not assess a charge for recording official bonds. The County Clerk must maintain an index of the records of official bonds.

Local Gov't Code Sec. 82.005

The appointment of a Deputy Clerk by the County Clerk must be in writing, be signed by the County Clerk, and bear the seal of the county court. The County Clerk shall record the appointment in the County Clerk's office but shall deposit the deputation in the office of the District Clerk.

b. Occupational Bonds

Some statutes require that persons who engage in certain occupations file a bond with the County Clerk:

- *Stevedores*, persons employed to load and unload ships, are required to have a $5,000 bond filed and recorded with the County Clerk. *Occ. Code Sec. 2351.051-053*
- *Commission merchants*, persons selling any goods on consignment and for commission, are required to have a $3,000 bond filed in each county for which the merchant maintains an office. *Occ. Code Sec.1801.051-054*
- *Public Weighers*, persons who are elected or appointed to issue an official certificate declaring the accurate weight or measure of a commodity, are required to have a bond in accordance with rules adopted by the department. The bond must be conditioned on the accurate weight or measure of a commodity being reflected on the certificate issued by the public weigher, on the protection of a commodity that the public weigher is requested to weigh or measure, and on compliance with all laws and rules governing public weighers. The bond is not void on first recovery. A person injured by the public weigher may sue on the bond**. These bonds are no longer filed with the County Clerk but must be filed with the Texas Department of Agriculture.** *Agric. Code Sec. 13.256*
- *Public Warehouse Operators*, persons who store cotton, wheat, rye, oats, rice, or any kind of produce, are required to file a minimum of a $5,000 bond. *Agric. Code Secs. 14A.002 - 14A.004*

c. Plats

Plats are maps showing legal descriptions and boundaries of subdivided land. The law concerning plats differs slightly depending on whether the tract of land is located inside a city's limits, outside a city's limits and outside a city's extraterritorial jurisdiction (ETJ), or outside a city's limits but within a city's ETJ. Recording fees for plat vary by county. There may also be a review fee collected by the county engineer for plats approved by the commissioners court. *Local Gov't Code Sec. 118.011(c)*

Plats for Tracts Within a City's Limits. Generally, the owner of a tract of land who wishes to divide the tract into two or more parts must have a plat of the subdivision prepared. The owner or proprietor of the tract or the owner's or proprietor's agent must acknowledge the plat in the manner required for the acknowledgment of deeds. The plat must be filed and recorded with the County Clerk of the county in which the tract is located. In order to be recorded, the plat must: *Local Gov't Code Sec. 212.004*

- Describe the subdivision by metes and bounds;
- Locate the subdivision with respect to a corner of the survey or tract or an original corner of the original survey of which it is part; and
- State the dimensions of the subdivision and of each street, alley, square, park, or other part of the tract intended to be dedicated to public use of for the use of purchasers or owners of lots fronting on or adjacent to the street, alley, square, park or other part.

The County Clerk may not record a plat unless it has been approved by the appropriate municipal authority and has certain required documents attached to it. The plat must have an original tax certificate from each relevant taxing unit, indicating that there are no delinquent property taxes. If the plat or re-plat is filed after September 1, a tax receipt showing that taxes have been paid or a statement from the taxing unit indicating that taxes *Prop. Code Sec. 12.002* *Local Gov't Code Sec. 212.005 Sec. 212.006*

have not been calculated must also be attached. These tax provisions do not apply to certain property acquired for public use or through inheritance.

There are special requirements for the filing of plats in counties in which a political subdivision had applied for financial assistance to economically distressed areas under Subchapter K, Chapter 17 of the Water Code.

Local Gov't Code Sec. 212.0105

Plats for Tracts Outside a City's Limits and Outside a City's ETJ. Generally, the owner of a tract of land who wishes to divide the tract into two or more parts must have a plat of the subdivision prepared, but there are exceptions set out in Section 232.0015 of the Local Government Code. The owner or proprietor of the tract or the owner's or proprietor's agent must acknowledge the plat in the manner required for the acknowledgment of deeds. The plat must be filed and recorded with the County Clerk of the county in which the tract is located. In order to be recorded, the plat must:

Local Gov't Code Sec. 232.001 Sec. 232.0015

- Describe the subdivision by metes and bounds;
- Locate the subdivision with respect to an original corner of the original survey of which it is a part; and
- State the dimensions of the subdivision and each lot, street, alley, square, park or other part of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the street, alley, square, park, or other part.

The commissioners court of the county in which the land is located must approve the plat by means of an order entered in the minutes of the court.

The County Clerk may not record a plat unless it has been approved by the county commissioners court and the commissioners court order is entered into the minutes of the court. The commissioners court (or a person designated by the commissioners court) issues a written list of the documentation and any other information that must be submitted with a plat application. If a plat application does not include all of the required documentation or information, then the commissioners court (or its designee) has ten (10) business days to notify the applicant of the missing items. The commissioners court must allow applicants to timely submit the missing documents or information.

Prop. Code Sec. 12.002

Local Gov't Code Sec. 232.002 Sec. 232.0025

An application is considered to be complete when all the required documentation and other information is received. The commissioners court (or its designee) shall take final action on a plat application within sixty (60) days after receipt of a completed plat application. If the plat application is disapproved, the commissioners court must provide the applicant with a complete list of the reasons for disapproval. If commissioners do not act within sixty (60) days, the plat application is granted by operation of law.

As with plats for tracts within a city's limits, the County Clerk may not record a plat located outside a city's limits and the city's ETJ unless the plat is accompanied by original tax certificates from each relevant taxing unit indicating that no delinquent property taxes are owed and the required recording fee.

Prop. Code Sec. 12.002

If a person submits a plat for the subdivision of a tract of land for which the source of the water supply intended for the subdivision is groundwater under that land, the commissioners court may require the plat application to have attached to it a statement prepared by a licensed engineer or geoscientist certifying that adequate groundwater is available for the subdivision.

Local Gov't Code Sec. 232.0032

Plats for Tracts Outside a City's Limits but Within the City's ETJ: A county and a municipality are required to enter into a written agreement that identifies the governmental entity authorized to regulate subdivision plats for tracts located outside a city's limits but within a city's ETJ. There are four ways in which the agreement can work:

Local Gov't Code Sec. 242.001

1. The city may be granted exclusive control over the plat approval case in which case the law concerning plats for tracts within a city's limits should be followed.
2. The county may be granted exclusive control over the plat approval process in which case the law concerning plats outside a city's limits and outside a city's ETJ should be followed.
3. The city and county may apportion the area within the ETJ so that the city controls the plat approval process in one designated area of the ETJ while the county controls the plat approval process in the other portion of the ETJ; and
4. The city and the county enter into an interlocal agreement establishing a single office that handles the plat approval process using a set of regulations established by the city and county.

d. Military Discharge Records

The County Clerk records, without charging a fee, the official discharge of persons who, after 1915, served as members of the United States armed forces, the United States armed forces reserve, or an armed forces auxiliary. If the military discharge record was recorded with the County Clerk prior to September 1, 2003, then the veteran who is the subject of the record (or the veteran's legal guardian) may direct, in writing, that the County Clerk destroy all copies of the record that the County Clerk makes available to the public as required by Section 191.006 of the Local Government Code. The County Clerk must comply with the request within 15 business days after the date the direction is received.

Local Gov't Code Sec. 192.002

If the military discharge record is recorded on or after September 1, 2003, then the record is confidential for 75 years following the date of recordation. During the 75-year period, the Clerk may permit the inspection of the record only in accordance with Section 552.140 of the Government Code.

Local Gov't Code Sec. 552.140

e. Lis Pendens

A lis pendens (Latin for "a pending lawsuit") is a notice that certain real property is the subject of litigation and that any interests acquired during the pendency of the suit are subject to its outcome. A party to an action who is seeking affirmative relief may file a notice that the action is pending for recording with the County Clerk of the county where the property is located. The party filing the lis pendens (or the party's agent or attorney) must sign the lis pendens, which must state:

Black's Law Dictionary, 7th Ed., p. 942-943

Prop. Code Sec. 12.007

- Style and number, if any, of the proceeding;
- Court in which the proceeding is pending;
- Names of the parties;
- Kind of proceeding; and
- Description of the property affected.

The County Clerk may record the notice in a lis pendens record or in the official public records and shall index the record in a direct and reverse index under the name of

each party to the proceeding.

f. Writ of Attachment

An "attachment" is the seizing of a person's property to secure a judgment or to be sold in satisfaction of a judgment. A "writ of attachment" is a court order providing for an attachment. A writ of attachment may be issued in a proper case at the initiation of a suit or at any time during the progress of a suit. Writs of attachment are levied (*i.e.*, the court orders are carried out) by law enforcement officers such as the sheriff or constable.

Black's Law Dictionary, 7th Ed., p. 123

Civ. Prac. & Rem. Code Sec. 61.003

When an officer levies a writ of attachment on real property, the officer must file a copy of the writ and the applicable part of the return with the County Clerk of the county in which the property is located. The Clerk records the name of each plaintiff and defendant, the amount of the debt, and the officer's return in full.

Civ. Prac. & Rem. Code Sec. 61.043

Prop. Code Sec. 12.012

Unless quashed or vacated, an executed writ of attachment creates a lien from the date of levy on the real property attached. If the writ of attachment is quashed or vacated, the court that issued the writ shall send a certified copy of the order to the County Clerk of the county in which the property is located. The County Clerk shall record the order and the name of each plaintiff and defendant.

Civ. Prac. & Rem. Code Sec. 61.061 Sec. 61.043

Prop. Code Sec. 12.012

g. Earmarks, Brands, Tattoos and Electronic Devices

Each person who has cattle, hogs, sheep, or goats shall have and may use one or more earmarks, brands, tattoos or electronic devices differing from those of the person's neighbors. The earmarks, brands, tattoos and electronic devices must be recorded with the County Clerk of the county in which the animals are located. SB 1233 and HB 2108 (82nd Legislature) added Subsection (h) to Section 144.041. This new Subsection allows a County Clerk to accept electronic filing or rerecording of an earmark, brand, tattoo, electronic device, or other type of mark for which a recording is required under this chapter or other law.

Agric. Code Sec. 144.001 Sec. 144.041 Sec. 141.041(h)

A person may record any earmark, brand, tattoo or electronic device that the person desires to use if no other person has recorded it. A person may record his or her earmarks, brands, tattoos and electronic devices in as many counties as necessary.

In recording an earmark, brand, tattoo or electronic device, the County Clerk shall note the date on which the mark or brand is recorded. Additionally, the person recording a brand shall designate the part of the animal on which the brand is to be placed and the Clerk shall include that information in the records.

Agric. Code Sec. 144.042

Not later than the 30th day after the date a County Clerk receives a record relating to cattle or horses under Section 144.041, Agriculture Code, the Clerk shall forward a copy of the record to the association authorized to inspect livestock under 7 U.S.C. Section 217a.

Agric. Code Sec. 144.041

Marks and brands must be re-recorded every 10 years. If marks and brands are not re-recorded within six months after they are due, then the marks and brands that are not re-recorded have no force and effect. Only the records made after each recording time may be examined or considered in recording marks and brands in the county.

Agric. Code Sec. 144.044

h. Estrays

An estray is a valuable tame animal found wandering and ownerless. In Texas, "estray" means stray livestock, stray exotic livestock, or stray exotic fowl. In 2013, Senate Bill 174 amended the Agriculture Code to expand the definition of "estray" to include stray bison.

Black's Law Dictionary, 7th Ed., p. 572
SB 174 (83rd Leg.)

In some circumstances, the sheriff will impound a reported estray and hold it for disposition. Senate Bill 174 also amended the Agriculture Code to establish that a sheriff or a sheriff's designee is not required to impound an estray if a perilous condition exists. The bill authorizes such a person to immediately dispose of the estray by any means without notifying the owner of the estray if such a condition exists and requires the sheriff to make a written report of the disposition. After impounding an estray, the sheriff must prepare a notice of estray that is to be filed in the estray records in the office of the County Clerk.

Agric. Code Sec. 142.001
Agric. Code Sec. 142.009
Sec. 142.010

SB 174 (83rd Leg.)

The owner of an estray may recover possession of the estray by following the procedures outlined in Section 142.010 of the Agriculture Code. These procedures include providing the sheriff with an affidavit of ownership and an affidavit of receipt of estray. Upon approving the affidavit of ownership, the sheriff is to file the affidavit of ownership in the County Clerk's estray records. The sheriff is also required to file the affidavit of receipt of estray in the County Clerk's estray records.

In some cases, the estray will not be claimed, and the county will obtain title to the estray. Generally, the sheriff will sell the estray at a sheriff's sale or public auction. The sheriff must execute a report of sale of impounded livestock and file the report in the estray records of the County Clerk.

Agric. Code Sec. 142.013

The statutes do not explicitly require that estray records be recorded, but many County Clerks do record these papers.

i. Other Animal Records

A person may dispose of livestock on the range by selling and delivering the marks and brands, but in order to acquire title, the purchaser must have the bill of sale recorded in the County Clerk's office. The County Clerk records the transfer in records maintained for that purpose and notes the transfer on records of marks and brands in the name of the purchaser.

Agric. Code Sec. 146.001(c)

A "slaughterer" (a person engaged in the business of slaughtering livestock for profit) is required to keep a record of all livestock purchased or slaughtered. At each regular meeting of the county commissioners court, each slaughterer shall make a sworn report relating to the animals slaughtered since the last regular meeting of the court. The slaughterer shall file the report with the County Clerk on the first day of each month. The County Clerk must copy the report and return the original report to the slaughterer. HB 92 (82nd Legislature) expanded the definition of "slaughterer" contained in Section 148.001. This bill also amended Section 234.032 of the Local Government Code regarding the counties to which this subchapter is applicable.

Agric. Code Sec. 148.001
Sec. 148.011

Agric. Code Sec. 148.001(2)(A)(B)(C) and (D)
Local Gov't Code Sec. 234.032

j. Assumed Name Certificates

Each person who regularly conducts business or renders professional services other than as a corporation, limited partnership, registered limited partnership, or limited liability

Bus. & Com. Code Sec. 71.051

company in a particular county must file an assumed name certificate with the County Clerk so that a record is available as to the business.

The County Clerk shall keep an alphabetical index of all assumed names (*i.e.*, business names) and an alphabetical index of all persons filing the assumed name certificates (i.e., owners). A copy of a certificate or statement is presumptive evidence in any court in the state of the facts contained in the copy if the copy is certified to by either the County Clerk in whose office the certificate or statement was filed or the Secretary of State. An assumed name certificate is effective for ten years from the date of the filing of the certificate. At the end of the ten-year time period, the certificate becomes null and void unless within six months prior to the expiration date, a renewal certificate is filed with the County Clerk.

Bus. & Com. Code Sec. 71.154

A registrant who has filed an assumed name certificate which ceases to transact business or render professional services under the assumed name stated in the certificate may file a statement of abandonment with the County Clerk.

Bus. & Com. Code Sec. 71.153

k. Condominium Records

A condominium may be created by the recording of a "declaration." A County Clerk shall record declarations in the real property records. Additionally, a County Clerk shall record condominium plats or plans in the real property records. Plats or plans are part of a declaration and may be recorded as part of the declaration or separately. The book for condominium plats is to be the same size and type as the book for recording subdivision plats.

Prop. Code Sec. 82.051

An agreement to terminate a condominium and all ratifications of the agreement must be recorded in each county in which a portion of the condominium is located.

Prop. Code Sec. 82.068

l. County Surveyor's Records

If a county does not have a county surveyor, the County Clerk acts as the custodian of the county surveyor's records. The Clerk also records appropriate documents in the county surveyor's records.

Nat. Res. Code Sec. 23.057 Sec. 23.060

m. Unknown or Abandoned Cemeteries

A person who discovers an unknown or abandoned cemetery is supposed to file a notice of the cemetery with the County Clerk of the county in which the cemetery is located. The Clerk may not charge a filing fee for filing such a notice.

Health & Safety Code Sec. 711.011

n. Others

Many Clerks maintain a "miscellaneous" volume in which they record rarely filed instruments such as:

- Grazing permits;
- State water permits;
- Tubercular commitments;
- Tax receipts (filed as county taxes are paid);
- Land patent records;
- Stud horse fees;
- Notices of intent to marry;

- Affidavits to swear off drinking; and
- Patent applications.

E. CERTIFIED COPIES

Local Gov't Code Sec. 191.004 Sec. 191.005

The County Clerk is often called upon to provide a certified copy, also known as an "attested copy," of an instrument as proof that the instrument is part of the public record. These certified copies are often used to prove ownership of property, personal identity, and other important matters. The Clerk, by affixing his or her seal and signature, swears that the copy is a true and exact replica of the recorded instrument in its entirety. The following format is often used in certifying a copy:

> **I _____, County Clerk do hereby certify that the above and foregoing is a true and correct copy of _____ as placed on file in my office on _____ and of record in Volume _____, page _____ of the _____ records of _____ County. Witness my hand and seal of office this _____ day of _____, 20___.**
>
> ***NOTE:*** *Most Clerks who scan instruments do not designate the location of documents by a particular volume and page. Thus, in certifying a copy of an instrument, the Clerk will generally make reference to an instrument number.*
>
> ***NOTE:*** *A County Clerk has discretion to determine whether the seal placed on every page of the document must be raised. A document that bears a Clerk's certificate is a certified document.*

A.G. Op. GA-0404 (2006)

> ***NOTE: Placing a stamp on each page helps to prevent fraudulent pages from being inserted into the document.***

F. FRAUDULENT RECORDS AND DOCUMENTS

Gov't Code Sec. 51.901

If a County Clerk has a reasonable basis to believe in good faith that a paper previously filed or recorded or offered for filing and recording is fraudulent, the Clerk must provide notice as follows:

- If the document is a purported judgment or other document purporting to memorialize or evidence an act, an order, a directive, or process of a purported court, the Clerk must provide written notice to the stated or last known address of the person against whom the purported judgment, act, order, directive or process is rendered.
- If the document or instrument purports to create a lien or asset a claim on real or personal property or an interest in real or personal property, the Clerk must provide written notice to the stated or last known address of the person named in the document or instrument as obligor or debtor and to any person named as owning any interest in the real or personal property described in the document or instrument.

The County Clerk is required to give this notice no later than the second business day after the date the paper is offered for filing. If the paper has been previously filed, then

the County Clerk is to give notice no later than the second business day after the date the Clerk becomes aware that the paper may be fraudulent.

A document or instrument is presumed to be fraudulent if:

1. The document is a purported judgment or other document purporting to memorialize or evidence an act, an order, a directive, or process of:
   A. A purported court or a purported judicial entity not expressly created or established under the constitution or the laws of this state or of the United States; or
   B. A purported judicial officer of a purported court or purported judicial entity described by Paragraph A; or
2. The document or instrument purports to create a lien or assert a claim against real or personal property or an interest in real or personal property; and
   A. Is not a document or instrument provided for by the constitution or laws of this state or of the United States;
   B. Is not created by implied or express consent or agreement of the obligor, debtor, or the owner of the real or personal property or an interest in the real or personal property or an interest in the real or personal property, if required under the laws of this state, or by implied or express consent or agreement of an agent, fiduciary, or other representative of that person; or
   C. Is not an equitable, constructive, or other lien imposed by a court with jurisdiction created or established under the constitution or laws of this state or the United States; or
3. The document or instrument purports to create a lien or assert a claim against real or personal property or an interest in real or personal property and the document or instrument is filed by an inmate or on behalf of an inmate.

Gov't Code Sec. 51.901(d)

In addition, if the Clerk believes in good faith that a document filed with the Clerk to create a lien is fraudulent, the Clerk shall request the assistance of the County or District Attorney to determine if the document is fraudulent before proceeding with filing or recording the document. The Clerk should also request additional documentation from the filer to prove the existence of the lien, and provide the documents to the County or District Attorney.

Gov't Code Sec. 51.904

The County Clerk is required to post a sign, in letters at least one inch in height that is clearly visible to the general public, in or near the Clerk's office, stating that it is a crime to intentionally or knowingly file a fraudulent court record or a fraudulent instrument with the Clerk.

Gov't Code Sec. 51.902 Sec. 51.903

A motion for judicial review of fraudulent judgment liens and liens on property may be filed with the District Clerk by:

- Persons against whom a purported judgment was rendered who have reason to believe that the document previously filed or recorded or submitted for filing or for filing and recording is fraudulent; or
- Persons who are purported debtors or obligors or who own real or personal property or an interest in real or personal property and who have reason to believe that a document purporting to create a lien or claim against their property or their interest in the property previously filed or submitted for

filing and recording is fraudulent.

After reviewing the documentation attached to a motion for judicial review of a fraudulent judgment lien or lien on property, the district judge enters an appropriate finding of fact and conclusion of law which must be filed and indexed in the same class of records in which the relevant paper was originally filed. The County Clerk may not collect a filing fee for filing a district judge's findings of fact and conclusions of law.

G. COUNTY CLERK'S RECORDING FEES

1. Real and Personal Property

Local Gov't Code Sec. 118.013 Sec. 118.012

Real property records filing fees and personal property record filing fees:

First page	$5.00
Each additional page or part of page or attachment	$4.00
Each name in excess of five that has to be indexed in real property records	$0.25

Local Gov't Code Sec. 118.013

Real property recording fees cover filing and recording, including indexing, a document that may or must be filed in the real property records. The real property recording fee does not apply to:

- Map records;
- Condominium records;
- Notary public records;
- Marriage records;
- Vital statistics records;
- Documents filed in the records of county civil or criminal courts or probate courts; or
- Personal property, chattels, and personal records in the County Clerk's office.

Local Gov't Code Sec. 118.0135

Waiver of real property recording fees. The commissioners court may direct the County Clerk to waive fees for filing real property records for a person buying or improving their home with assistance from certain federal or state grant programs.

Local Gov't Code Sec. 118.012

Personal property recording fees cover filing and recording, including indexing, a document that may or must be filed in the personal property, chattels or personal records in the Clerk's office. The personal property fee does not apply to:

- Notary public records;
- Marriage records;
- Vital statistics records;
- Documents filed in the records of county civil or criminal courts or probate courts;
- Documents filed and recorded in the real property records in the office of the County Clerk; or
- Instruments for which the filing fee is fixed by the Business and Commerce Code.

Both the real property and personal property recording fees are in addition to any other fees that may be prescribed by law.

Local Gov't Code Sec. 118.012 and 118.013

Restitution lien on real or personal property in a criminal case. The victim of a crime or the state may file a restitution lien with a County Clerk against the defendant's real or personal property. The fee for such filing is $5.00.

CCP 42.22

2. Federal Liens Recording Fee

Prop. Code Sec. 14.004 and 14.005

Federal lien filing fee	$10.00
Federal lien certificate fee	$10.00
Copy of notice of federal lien fee	$10.00

Federal lien filing. This fee is for filing and indexing a federal lien or certificate or notice affecting a federal lien. The filing of the same lien in both real and personal property is two filings.

Prop. Code Sec. 14.004 and 14.005

A County Clerk may charge a records management fee of not more than $10.00 after the filing and recording of a federal lien.

Local Gov't Code Sec. 118.0216 Sec. 118.011 HB 1513 (83rd Leg.)

If the commissioners court has set a courthouse security fee, the Clerk should charge this fee of $1.00 for the filing and recording of a federal lien.

Local Gov't Code Sec. 291.008

Federal lien certificate. This fee is for issuing a certificate showing whether a federal lien or certificate or notice is on file.

Prop. Code Sec. 14.004

Copy of notice of federal lien. This fee is for furnishing a copy of a federal lien or certificate or notice affecting a lien.

3. Oath Administration Fee

Local Gov't Code Sec. 118.011

Oath administration fee	$1.00

This fee is for administering an oath with or without the Clerk's seal. It does not apply to oaths administered in performing a duty as Clerk of the county civil, criminal or probate court.

Local Gov't Code Sec. 118.021

4. Bond Approval Fee

Local Gov't Code Sec. 118.011

Bond approval fee	$3.00

The bond approval fee is for approving bonds other than notarial bonds and bonds required to be approved in a county civil, criminal or probate court.

Local Gov't Code Sec. 118.016

5. Brand Registration Fee

Local Gov't Code Sec. 118.011

Brand registration fee	$5.00

The brand registration fee covers registering a brand, including indexing, searching the records and issuing a certificate.

Local Gov't Code Sec. 118.020

6. Plat Application Fee

Local Gov't Code Sec. 232.0021

The commissioners court may impose an application fee to cover the cost of the

county's review of a subdivision plat and inspection of street, road, and drainage improvement describe by the plat. This fee may be collected by the County Engineer's Office and not the County Clerk. The County Clerk can set a fee to record a plat

Local Gov't Code Sec. 118.011(c)

7. Assumed Name Certificate Fee

Bus. & Com. Code Sec. 71.155

Assumed name certificate fee	$2.00

The assumed name certificate fee is $2.00 for filing each certificate, plus a fee of $.50 for each name to be indexed in addition to the name of the business and one owner's name.

8. Mental Health Background Check Fee

Local Gov't Code Sec. 118.011

Mental health background check fee	Not more than $2.00

Local Gov't Code Sec. 118.0217

This mental health background check for license to carry a concealed weapon fee is for a check, conducted by the County Clerk at the request of the Texas Department of Public Safety, of the county records involving the mental condition of a person who applies for a license to carry a concealed handgun. The fee is paid from the application fee submitted to the Department of Public Safety under Section 411.174(a) (6), Government Code. The fee provisions do not affect the procedures for access to court records prescribed by Section 571.015, Health and Safety Code.

9. Certified or Non-certified Papers Copy Fee

Local Gov't Code Sec. 118.011

Certified and non-certified papers	
For each page or part of page	$1.00
For Clerk's certificate per document	$5.00

Local Gov't Code Sec. 118.014

Certified copy fees cover placing the Clerk's certificate on each page or part of page and copying each page or part of page. Fees must be paid when the order is placed. These fees do not apply to:

- A certified document for which Subchapter A of Chapter 118 of the Local Government Code sets out another fee;
- A certified copy of map/plat records or condominium records; or
- A license for which the fee is set out in another statute. (118.014)

Local Gov't Code Sec. 118.0145

Non-certified copy fees cover issuing each page or part of a page of a document. Fees must be paid when the order is placed. The Clerk may waive or reduce the fee for a noncertified copy of a document if the document involves a matter relating to family law or is the record of a judgment in a misdemeanor case.

10. Records Management and Preservation Fee and Records Archive Fee

Local Gov't Code Sec. 118.011

HB 1513 (83rd Leg.)

Records management and preservation fee	not more than $10.00
Records archive fee	not more than $10.00

Local Gov't Code Sec. 118.011Sec. 118.025(c) HB 1513

Records management and preservation. The fee for "Records Management and Preservation" under Section 118.011 is for the records management and preservation services performed by the County Clerk after the filing and recording of a document in the

records of the office of the Clerk. It must be paid at the time of the filing of the document and does not apply to a state agency. *(83rd Leg.)*

The fee may be used only to provide funds for specific records management and preservation, including for automation purposes.

All expenditures from the records management and preservation account shall comply with the purchasing practices required by Subchapter C, Chapter 262 of the Local Government Code.

Counties Adjacent to an International Boundary

The 81st Legislature amended Subsection (e), Section 118.0216 of the Local Government Code. The amended statute no longer requires the County Clerk to prepare an annual written plan for funding the automation projects and records management and preservation services performed by the Clerk; it eliminates the public hearing and requirement for approval of the plan by the commissioners court; and, it removes the requirement that funds from the records management and preservation account may only be expended as provided by the plan. The changes only apply to an annual written plan that would have been required on or after the effective date of the amended statute. A plan adopted before the effective date and expenditures under that plan are subject to the requirements of the **prior** version of the statute that existed on the date the plan was adopted and that former law is continued in effect for that purpose. *Local Gov't Code Sec. 118.0216(e)*

***N**either the commissioners court nor the County Clerk controls the use of the records management and preservation fees. As a practical matter, both must agree on the use of the funds. Funds collected under section 118.0216 may be used to pay for the costs of initially recording documents by microfilm, but only if the commissioners court determines that this process is part of a specific records preservation and automation project within section 118.0216 of the Local Government Code. The records management and preservation fee must be spent for specific records preservation and automation projects, subject to the commissioners court's advance approval, and may not be diverted from its statutorily assigned purposes to pay other expenses of the Clerk's office.* *AG Op. DM-492 (1998)*

A County Clerk may collect the records management and preservation fee only on documents filed with the County Clerk in his or her capacity as County Clerk. The County Clerk may not collect the records management and preservation fee on birth, death, and fetal death records filed with the County Clerk in his or her capacity as local registrar. *A.G. Op. DM-371 (1995)*

GA-0118 provides additional direction on how counties may use records management and preservation fees.

Records archive fee. The fee is established at the discretion of the commissioners court. It must be set and itemized in the county's budget as part of the budget preparation process. The fee is for the preservation and restoration services performed by the County Clerk in connection with maintaining a County Clerk's record archive. The fee must be paid at the time a person, excluding a state agency, presents a "public document" to the County Clerk for recording or filing. A public document is defined as any instrument, document, paper or other record that the County Clerk is authorized to accept for filing or maintaining in the Official Public Records of the county. HB 2716 (82nd Legislature) repealed Section 118.025(j) and amended 118.025(d), (e), (g), and (i). Accrued interest remains with the *Local Gov't Code Sec. 118.025*

account and the Clerk must prepare the annual written plan before collecting the fee. State agencies are exempt from the Archive Fee per Local Government Code Section 118.025(c).

Local Gov't Code Sec. 118.025(h)

If the county chooses to charge a County Clerk's records archive fee, then the following notice must be posted in a conspicuous place in the County Clerk's office:

> "THE COMMISSIONERS COURT OF _____ COUNTY HAS DETERMINED THAT A RECORDS ARCHIVE FEE OF $_____ IS NEEDED TO PRESERVE AND RESTORE COUNTY RECORDS."

11. Courthouse Security Fee

Local Gov't Code Sec. 291.008(a)

Courthouse security fee for filing of documents $1.00

The commissioners court may set a fee not to exceed $5.00 for courthouse security to be collected by the Clerk at the time of filing in each civil case.

AG Op. DM-283 (1994)

AG Op. DM-371 (1995)

Local Gov't Code Sec. 291.008(d) and Sec. 192.002

If a commissioners court sets a courthouse security fee, the County Clerk must collect a fee of $1.00 for filing any documents not subject to the security fee. Accordingly, the County Clerk must charge the $1.00 security fee on the filing of documents such as leases, wills and deeds. However, the $1.00 security fee is not to be charged upon the filing of birth and death records or military discharge records.

12. Returned Check Fee

Local Gov't Code Sec. 118.011

Returned check fee not less than $15.00 or more than $30.00

The returned check fee is set and collected by the County Clerk.

Local Gov't Code Sec. 118.0215

The fee is for a check presented to the Clerk for payment of taxes or any other payment owed to the county that is returned by the bank or other financial institution because of:

- Insufficient funds to cover the check;
- A closed account;
- An unauthorized signature;
- A check drawn on uncollected funds; and
- Any other reason considered to be the fault of the drawer.

13. Other Fee Provisions

Local Gov't Code Sec. 118.011(c)

a. Reasonable fee

The Clerk must charge reasonable fees for performing other prescribed or authorized by statute for which a fee is not prescribed (*e.g.* filing a plat).

b. Ex officio services

Local Gov't Code Sec. 118.023

If the County Clerk receives fees for ex officio services or for other public services not otherwise provided for, the commissioners court sets the fees. The fees are paid quarterly out of the county treasury on the order of the commissioners court. SB 373 (82nd Legislature)

amended Section 118.023(c) to add county orders for payment to the list of matters which qualify as ex officio services. This change is effective 6/17/11.

c. Fees must be paid

Local Gov't Code Sec. 118.023(b)

A County Clerk may not be compelled to file or record any instrument or writing until payment for all fees has been tendered. This does not apply to documents recorded in suits pending in a county court.

d. Penalty for Clerk's failure to collect a fee

Local Gov't Code Sec. 154.009

If a commissioners court finds, following a hearing, that a County Clerk failed, through neglect, to collect a fee or commission the he or she was required to collect, the commissioners court must deduct the amount of the fee or commission from the Clerk's salary.

e. No charge for certain filings

Local Gov't Code Sec. 118.011(d)

The County Clerk may not charge the U.S. Immigration and Naturalization Service for a copy of a document related to an individual's criminal history.

Local Gov't Code Sec. 192.002

There is no charge for filing deputation records or discharge papers of veterans. There is also no charge to record a district judge's findings of fact and conclusions of law under Sec. 51.902 and 51.903, Government Code, regarding an action on a fraudulent judgment lien or lien on property.

f. Free access to records

Local Gov't Code Sec. 118.024

The fee provisions in Subchapter 118 of the Local Government Code do no limit or deny any person full and free access to any document referred to in the subchapter. A person is entitled to read, examine, and copy from those documents or from any microfilm or other photographic image of the documents.

AG Op. DM- 30 (1991)

While a County Clerk may provide microfilm copies of real estate and deed records to the public, the law does not impose a duty to do so. The Open Records Act requires the County Clerk to provide suitable copies. Attorney General Opinion JM-95 is overruled to the extent of any conflict herewith.

g. Payment by credit

AG Op. JM-533 (1986)

In response to an inquiry about whether a County Clerk may deliver the services of his office on credit, the attorney general opined that county officers are not authorized and cannot be authorized to deliver county services to individuals, associations, or corporations on credit unless some provision of the Texas Constitution authorizes it.

AG Op. JM-1229 (1990) DM-382 (1996)

> *AG Op. JM-533 was overruled, in part, by AG Op. JM-1229 (1990): A lending of credit that accomplishes a public purpose and is accompanied by controls that ensure the use of public credit for a public purpose does not violate Article III, Section 3, of the Texas Constitution. The determination that a particular extension of credit meets the constitutional requirements is in the first instance within the sound discretion of the governing body, subject to judicial review.*

CHAPTER 3

SUPPORTING THE CRIMINAL COURTS

A. INTRODUCTION TO THE CRIMINAL COURTS

The Clerk's role as supporter of the criminal courts is vital. Thousands of criminal cases are disposed of at the county level each year. The Clerk's duties in criminal cases are varied and include filing cases, issuing processes, maintaining minutes of proceedings, collecting costs and fines, and arranging for commitments and appeals. Criminal trial courts in Texas are organized on three levels:

1. The justice and municipal courts are the lowest level. These courts try crimes designated as misdemeanors where the maximum punishment for the offense is a fine not to exceed $500.
2. County courts are the middle level of state criminal trial courts and are the ones supported by the County Clerk. County courts have original jurisdiction in Class A and B misdemeanors. County courts serve as appellate courts in cases originally tried in justice and municipal courts.

    a. Constitutional County Courts. Traditionally, criminal cases are heard by the county judge sitting as the judge of the constitutional county court. This is still true for many of the smaller counties.

    b. Statutory County Courts. In high population areas, the caseload of both civil and criminal proceedings has grown so large that the legislature has created special statutory county courts. Courts established by the legislature are called county courts at law, county criminal courts, or some other name to distinguish between them and the constitutional county court. These statutory county courts generally have the same jurisdiction and powers as the constitutional county court, but in many counties jurisdiction has been limited or expanded.
3. The highest level of trial court is the district court, which hears felonies, the most serious of criminal cases. The County Clerk normally has no official duties in regard to district court cases.

B. THE CLERK'S ROLE IN A CRIMINAL CASE

CCP Art. 42.21

In a criminal proceeding, the role of the County Clerk is to:

- receive and file all papers;
- receive all exhibits at the conclusion of the proceeding;
- issue all process; and
- perform all other duties imposed on the Clerk by law.

C. FILING A CRIMINAL CASE

1. Introduction

The typical misdemeanor case. A misdemeanor case for the county court will usually originate in the office of the County Attorney. There, a citizen or peace officer will swear out a complaint alleging that a misdemeanor has been committed. If the County Attorney decides that there is probable cause for prosecution and that jurisdiction in the matter lies within the

county court, the attorney will have the complaint issued from the attorney's office and filed with the County Clerk. The Clerk will also receive a document called the information, which is the County Attorney's formal charge against the defendant. The information serves the same purpose in county court as an indictment does in district court. The Clerk should have both the complaint and the information before filing the case.

Criminal cases transferred from district court. Occasionally, a district judge will decide that jurisdiction of a case before him or her belongs with the county court and will transfer proceedings to the county court. In such cases, the County Clerk should receive an order transferring the case and all instruments and papers concerning the case that were previously filed with the District Clerk. The County Clerk should then file the case in the normal manner (without a complaint and information) and proceed as if the case originated in the county court.

Criminal cases on appeal from justice or municipal court. Cases may also be heard in county court on appeal from justice or municipal courts. The Clerk of the lower court forwards all instruments previously filed in the case along with an appeal bond to the County Clerk. The County Clerk then files the appeal exactly like a new criminal case except for the absence of a complaint and information. (*see* also "Appeals from Lower Courts" in this chapter.)

2. Initial Filing Procedures

Before a case may be heard in county court, it must be filed for record in the County Clerk's office. The following initial procedures, some of which are detailed more fully in the "Dockets" and "Index to the Criminal Minutes" sections of this chapter, must be executed before proceedings can begin:

- Upon receipt of the complaint and information from the County Attorney, the Clerk should file-mark the documents showing the date and time received. Some Clerks will file-mark the information a few minutes later than the complaint because the complaint is supposed to be issued first.
- In appeals from lower courts or transfers from district court, there will be no complaint or information, but all instruments present should be file-marked to show that they have been received.
- The case should be assigned a unique and sequential case number for file identification. This number should be stamped or written on all instruments, records, file folders, and indexes.
- Capias (sometimes referred to as a warrant) is issued by the court or under a court order.
- The case should be entered in the criminal file docket (also called the fee docket, fee book, and Clerk's docket).
- A judge's docket sheet should be prepared and placed in the judge's pending docket book.
- The case must be indexed in the index to criminal minutes.
- A permanent case jacket or flat folder should be prepared in which to store all instruments filed. Some Clerks choose to note each instrument stored within the folder on the outside of the jacket, and the jacket or folder should be placed in the pending case file.

The case is now officially filed in the county court and is ready for further prosecution. The Clerk's role is now passive, awaiting further action by the prosecutor, defense attorney, and

judge. Some cases will be filed and disposed of in the same day, while others stay pending for indefinite periods of time.

If a defendant pleads not guilty to a misdemeanor punishable by confinement in jail, a county judge who is not a licensed attorney may transfer the case from the county court to a district court or county court at law.

CCP Art. 4.17

> ***NOTE:*** *There are many references to items that must be placed in a book. As a practical matter, most Clerks now use computers instead of books.*

3. Subsequent Filing Procedures

As a case moves toward disposition, numerous and varied documents will be filed as a part of the permanent record. Some of these include:

Capias Return	Judgments
Bail Bonds	Sentences
Motions	Verdicts
Applications	Petitions
Waivers	Warrants
Subpoenas	Dismissals
Orders	Commitments

In a criminal case, a judge may "sign" a document by allowing another person to place a mark on a document that constitutes the judge's approval of the document ***only if*** *the other person does so in the presence of and under the direction of the judge.*

AG Op. JM-373 (1985)

A judge may "sign" an arrest warrant by personally entering a computer graphic of his or her signature on the warrant in the computer system.

AG L.O. 97-082 (1997)

A Clerk has the authority to prepare a judgment under the supervision of an attorney.

AG Op. JC-0259 (2000)

CCP Art. 42.01, Sec. 2

Proper filing of these documents would include the following procedures as the document is presented to the Clerk:

- File-mark the document to show the date and time received.
- Note the case number on the document if it is not already shown.
- Enter the type and date of the document in the criminal file docket.
- If the document is an order, or other paper signed by the judge, record it in the criminal minutes and note the volume and page number(s) in the index, file docket, and judge's docket sheet.
- Place the document in the permanent file folder and note the type of document and date filed on the outside of the jacket or folder.

D. FILING AND DISPOSING OF EXHIBITS

The Clerk of the county court is required to receive and file all exhibits in a criminal case.

CCP Art. 2.21(a), (b), and (c)

Disposing of firearm or contraband as exhibit. A Clerk has a limited role in disposing of firearms or other contraband used as exhibits in a criminal case. Any firearm or contraband received by a court as an exhibit in a criminal case is to be placed in the hands of the sheriff or, in a county with a population of 500,000 or more, the law enforcement agency that collected, seized, or took possession of the firearm or contraband, or produced the firearm or contraband at the proceeding, for safekeeping at any time the proceeding is pending or thereafter.

The sheriff or the law enforcement agency is required to receive and hold exhibits consisting of firearms or contraband and release them only to persons authorized by the court in which such exhibits have been received or dispose of them as provided by Chapter 18 of the Code of Criminal Procedure.

Disposing of other exhibits. The Clerk has a role in providing notice and disposing of exhibits that are *not*: *CCP Art. 2.21(d)*

- firearms or contraband
- ordered by the court to be returned to its owner
- exhibits in another pending criminal action

These exhibits are termed "eligible exhibits" in the statute, and may be disposed of: *CCP Art. 2.21(e)*

- For misdemeanors or felonies for which the sentence imposed by the court is five year or less: on or after the first anniversary of the date on which a conviction becomes final in the case.
- For non-capital felonies for which the sentence imposed by the court is greater than five years: on or after the second anniversary of the date on which a conviction becomes final in the case.
- On or after the first anniversary of the date of the acquittal of a defendant.
- On or after the first anniversary of the date of the death of a defendant. *HB 1728 (83rd Leg.)*

A Clerk may dispose of an eligible exhibit or may deliver the eligible exhibit to the county purchasing agent for disposal as surplus or salvage property under Section 263.152, Local Government Code, if on the date provided by Subsection (e) the Clerk has not received a request for the exhibit from either the attorney representing the state in the case or the attorney representing the defendant. *CCP Art. 2.21(f)*

Notwithstanding Section 263.156, Local Government Code, or any other law, the commissioners court shall remit 50 percent of any proceeds of the disposal of an eligible exhibit as surplus or salvage property as described by Subsection (f), less the reasonable expense of keeping the exhibit before disposal and the costs of that disposal, to each of the following: *CCP Art. 2.21(f-1)*

1. The county treasury, to be used only to defray the costs incurred by the District Clerk of the county for the management, maintenance, or destruction of eligible exhibits in the county; and
2. The state treasury to the credit of the compensation to victims of crime fund established under Subchapter B, Chapter 56.

A Clerk in a county with a population of less than 2 million must provide written notice by mail to the attorney representing the state in the case and the attorney representing the defendant before disposing of an eligible exhibit. *CCP Art. 2.21(g)*

The notice must: *CCP Art. 2.21(h)*

- Describe the eligible exhibit;
- Give the name and address of the court holding the exhibit; and
- State that the eligible exhibit will be disposed of unless a written request is received by the Clerk before the 31st day after the date of the notice.

If a request is not received by the Clerk before the 31st day after the date of notice, the Clerk may dispose of the eligible exhibit. If a request is timely received, the Clerk must deliver the eligible exhibit to the person making the request if the court determines the requestor is the owner of the eligible exhibit.

CCP Art. 2.21(i) Art. 2.21(j)

E. ISSUING PROCESSES

The County Clerk, as an officer of the court, is authorized to issue a variety of processes in the name of the court. Most of the processes are for the purpose of bringing persons or things before the court.

1. Capias

The capias is the most common of processes and is found in almost all criminal cases filed in county court. The capias serves the same purpose as a warrant and commands the sheriff to arrest the defendant and bring him or her before the court.

Article 23.04, Code of Criminal Procedure, states that a capias or summons in a misdemeanor case must issue from a court having jurisdiction of the case. A United States District Court has held that the judge must issue, or sign, the capias in a misdemeanor case.

Crane v. State of Texas, 534 F.Supp. 1237 (N.D. Tex.1982)

Some counties use an affidavit of facts showing and proving probable cause along with a signed written order from the judge for the Clerk to issue the capias. If this method is used, a copy of the order of issuance should be attached to the capias as proof of instruction for the Clerk to issue.

2. Alias Capias

Should the defendant need to be arrested a second time (after the original capias has been executed and returned), an alias capias will be issued. This usually occurs in cases of release of surety (where the surety wants the defendant picked up so the bond can be cancelled) or bond forfeiture (when the defendant skips bond). There is no difference between an alias capias and a capias, either in content or procedure, except for the title.

3. Capias Pro Fine

The capias pro fine is issued with the judge's signature in cases where a convicted defendant has not paid the assessed fine and court costs.

4. Bill of Costs

At the termination of a case in which the defendant has been found guilty, the defendant becomes liable to pay all court costs and any fine that may have been assessed. The Clerk prepares a bill of costs containing the case number, style, judgment, and itemization of all costs due from the defendant. The Clerk signs the instrument, affixes the seal of the court, and presents the bill of costs to the defendant or to the sheriff for service.

5. Subpoena

CCP Art. 24.01

A subpoena commands an individual to appear before the court on a particular date to give testimony as a witness in a case. Either the prosecution or the defense may request that the Clerk issue subpoenas at any time during the course of the trial. Clerks may request that the application or request be in writing before issuing subpoenas. A written application is always needed for an out-of-county witness.

Either attorney begins the subpoena process by filing an application for a subpoena with the Clerk. The application must show the following information:

- Case number
- Style of case
- Court in which to appear
- Attorney's name
- Date of requested appearance
- Exact name and address (including county) of each witness to be subpoenaed

The application, which must be signed by the attorney, is file-marked, signed, and sealed by the Clerk taking the application.

The Clerk issues a subpoena in duplicate for each witness listed in the application. The Clerk gives the original and the copy of each subpoena to the sheriff for his execution and return. The officer makes his or her return on each original subpoena and returns the original(s) to be filed in the office of the Clerk. The application is filed in the case folder.

If the application asks for an out-of-county witness, the subpoena should be made in duplicate on a form prepared for this purpose. The Clerk sends the original and the copy to the sheriff of the county in which the witness resides. The sheriff makes a return on the original. Out-of-county sheriffs will charge a fee for serving the subpoena.

6. Subpoena Duces Tecum

CCP Art. 24.02

The subpoena duces tecum is similar to the subpoena except that it commands the witness to bring evidence to court to be used in the case. This evidence usually consists of documents or records. The subpoena duces tecum is issued in duplicate with the original and copy going to the sheriff for service, and the sheriff makes a return on the original. An application stating the exact evidence requested should be filed with the Clerk.

7. Witness Expense Payments

CCP Art. 35.27

AG Op. C-637 (1966)

Witnesses subpoenaed from out of the county are entitled to reimbursement for transportation, meal, and lodging expenses while testifying in a case. The Clerk is not responsible for actually paying the witness; instead, the Clerk issues a witness account form drawn on the State of Texas to the witness. The Clerk, the witness, or anyone acting on behalf of the witness may present the voucher to the state comptroller of public accounts for payment.

The Clerk fills out a witness account form in duplicate. The form shows days served and miles traveled. It must be attested to by the witness, the Clerk, and the judge in the trial.

The original witness account form goes to the witness, and the copy is filed in the appropriate case folder.

8. Commitments

All commitments to jail in criminal cases are processes of the court and are prepared by the Clerk. They may be issued only after the judge has signed and handed down an order of commitment to the Clerk.

Orders of commitment may come as primary punishment for a misdemeanor, secondary punishment for not paying a fine, or secondary punishment as a result of revocation of probation. Except in rare cases, commitments from county courts will be to the county jail.

> ***NOTE:*** *A certified copy of the judgment ordering a defendant to jail may be used in place of an official order of commitment form.*

Procedurally, commitments are issued as follows:

- The Clerk receives the judge's docket sheet and order of commitment.
- The Clerk prepares the commitment form detailing the defendant's name, charge, and term of commitment.
- The form must be signed and sealed by the Clerk.
- Even when the defendant is jailed, he is responsible for paying the fine and court costs. The defendant may be serving time in lieu of payment.
- The date of commitment is noted in the criminal file docket.
- The commitment form and the defendant are turned over to the sheriff. The order of commitment is filed. Although it is not usually required, the Clerk may wish to send a copy of the order of commitment to the sheriff along with the commitment form.
- After the defendant serves the required time, the sheriff returns the commitment form showing the release of the prisoner. The date of release is noted in the criminal file docket, and the commitment form is filed.

F. DOCKETS

To maintain an accurate record of cases in progress, most Clerks use three different dockets: *CCP Art. 33.07*

1. the judge's docket;
2. the criminal file docket; and
3. the case file.

1. Judge's Docket

The judge's docket is prepared by the Clerk at the time a case is filed. It performs two essential functions.

First, the docket is official notification to the judge that a case has been filed within his or her jurisdiction and is to be decided in his or her court. It gives the judge preliminary information as to the nature of the offense, the parties, and the attorneys who will be pleading the case. Once the judge has possession of the docket, proceedings in the case can be scheduled.

Second, the docket is a record of important events that happen in the courtroom. For each case, all orders, judgments, verdicts, sentences, and fines are to be noted.

The exact format of the judge's docket may vary but should contain at least the following:

- Case number
- Date of filing
- Names of parties (the style of the case is always "The State of Texas v. Defendant")
- Attorney of record (for prosecution and defense)
- Nature of the offense
- Orders of the court

The last item is often in the form of the judge's own notes and should include the order, date of order, and volume and page numbers of the order in the criminal minutes. The volume and page numbers are added by the Clerk as the minutes are recorded.

2. Criminal File Docket

This book is called various names in the different offices and may be referred to as the fee book, file docket, or Clerk's docket. When maintained properly, it becomes a master reference guide to all aspects of a case.

A separate entry is created for each case at the time of filing. Initial docket information should include:

- Case number
- Style of the case
- Attorneys of record
- Date of filing

As the case progresses, each item or occurrence of importance should be noted in the file docket. This would include:

- All processes issued by the Clerk and date of issuance
- All returns of processes and date of return
- All instruments filed for record and date of filing
- All orders, judgments, and verdicts, and date given
- All commitments and releases, and date of action

A portion of the file docket should be devoted to the itemization of court costs and fines as they are incurred. Records should also be kept of the receipt of payments and disbursement of costs and fines to various county offices. A complete accounting record is thereby established for each case.

By maintaining the file docket in such manner, the Clerk will, at any time, be able to report on the procedural or financial aspects of any case.

3. Case Jacket

The principal use of the case jacket is as a depository for all instruments filed with the Clerk for each case. Most Clerks maintain separate storage areas for the case jackets of pending cases and disposed cases. This facilitates access to active cases on the part of attorneys, judges, and the Clerk.

For the convenience of judges and attorneys, most Clerks duplicate, on the outside of the case jacket, every entry made in the criminal file docket concerning docket information, processes issued, and instruments filed for record. Thus, as the case jacket is delivered to the courtroom for each hearing in the case, a complete record of all activities to date is available for all parties.

At the termination of each case, the Clerk should examine the contents of the case jacket to insure that all instruments that have been filed for record are present. The Clerk should also check to be certain that all instruments to be recorded in the criminal minutes have been so recorded and indexed.

4. Fingerprint on Docket Sheet, Judgment or Probation Order

CCP Art. 42.01
CCP Art. 38.33

If a defendant is convicted of a felony or misdemeanor, the Clerk or bailiff of the court must fingerprint the defendant's right thumb on the judgment. Also, if the adjudication of guilt of a defendant is deferred and a defendant is placed on community supervision (Section 5, Article 42.12, Code of Criminal Procedure), the Clerk or bailiff of the court must fingerprint the defendant's right thumb on the order placing the defendant on probation.

A fingerprint must be taken either by use of the ink-rolled print method or by use of a live-scanning device that prints the fingerprint image on the judgment, probation order, or docket sheet.

5. Notice of Criminal Court Docket Settings

CCP Art. 17.085
HB 1573 82nd Leg.

The Clerk must provide online access to that court's record of criminal cases or post in a designated public place in the courthouse notice of a prospective criminal court docket setting as soon as the court notifies the Clerk of the setting.

G. INDEX TO THE CRIMINAL MINUTES

A vital part of the processing of each case is its indexing. The index is the key to access to the criminal minutes.

There should be at least one entry in the index to criminal minutes for every disposition filed with the Clerk. Where there is more than one defendant in a case, the name of each defendant should be indexed. The sequence of the index is alphabetical by last name of the defendant. In criminal cases, there is no need to keep a cross-index of plaintiffs because the plaintiff is always the State of Texas. If the county has more than one court hearing criminal cases, a separate index should be kept for the minutes of each court.

The form of the index is not set by statute, but has been standardized somewhat by convention to contain the following information:

- **Case Number** - Inclusion of the case number is essential because all of the Clerk's case records will be filed in numerical sequence, not alphabetically.
- **Surname and Given Name of Defendant** - Many cases are originally filed using the defendant's alias. The case will be prosecuted using the defendant's real name when that becomes known, and the Clerk must re-index the case at that time.
- **Volume and Page of Minutes** - Make an entry each time a minute is recorded. When a minute mentions more than one defendant, cross-index the minute for each defendant concerned.
- **Date Convicted** - Entered at time of conviction.

H. PREPARATION AND RECORDING OF MINUTES

1. Preparation of Minutes

Rather than trying to type each item of the minutes, most Clerks have adopted the use of forms. A variety of forms, prepared ahead of time, cover the majority of types of judgments and orders. Working from the judge's docket sheet, the Clerk (in some cases or counties, the county attorney) determines what form is needed, fills in the requisite data and returns the completed form to the judge for his or her signature.

Exactly what constitutes criminal minutes varies somewhat from office to office. At minimum, judgments and dismissals must be recorded. Some Clerks prefer to record all instruments signed by the judge, and a few Clerks record all instruments filed for record so that the minutes are a duplication of the case jacket. Consultation among the Clerk, judge, and county attorney will determine which documents become part of the minutes in each county.

2. Recording of Minutes

As in all of the Clerk's processes, the objective is to transcribe or copy essential instruments into a permanent record book. A set of criminal minutes should be kept for each county court that hears criminal cases. Most courts are considered to be in continuous session, hearing cases year round. It may be, however, that some courts will be divided into terms and that minutes for each term will be so certified to by the judge and Clerk. The Clerk should check local procedure on this matter.

To record minutes, the Clerk should receive the instrument and see that all blanks are properly filled out and that the judge's signature is present.

Determine what volume will be used and assign the next unused page number to the instrument. Write or stamp the volume and page number on the instrument. Follow usual procedures for recording. Note the volume and page number in the index to criminal minutes, judge's docket sheet, criminal file docket, and case jacket.

File the instrument (or the copy) in the case jacket.

I. COLLECTION OF FINES, FEES AND COURT COSTS

Upon conviction of most misdemeanors, the punishment will be the levying of a fine and court costs upon the defendant. While not required by statute, in many counties the Clerk will collect the fine and costs for all county offices at the termination of each case. This only applies, however, to cases in which the defendant either pleads guilty or is found guilty upon final judgment. When cases are dismissed or when the defendant is not found guilty, no court costs are assessed.

> ***NOTE:*** *Article 103.003 of the Code of Criminal Procedure authorizes the following to collect court costs and fees:*
>
> 1. *District and County Attorneys*
> 2. *County Clerks and District Clerks*
> 3. *Sheriffs*
> 4. *Constables*
> 5. *Justices of the peace*
> 6. *Community supervision and corrections departments*

NOTE: *The Office of Court Administration operates a program to help Clerks with the collection of fines and court costs. Please call the Office of Court Administration at 512/463-1625 for more information. Information on the collection program is also available online at http://www.txcourts.gov/cip.aspx.*

When the defendant appears before the Clerk to pay the fine, the Clerk should have available the judge's docket sheet, the criminal file docket (fee book), and a bill of costs with all necessary information. The Clerk will then do the following:

- Check the judge's docket to see that judgment and sentence have been rendered and that the defendant has accepted sentence.
- Fill out the bill of costs as to case number, style of case, court designation, and judgment rendered.
- Transfer from the criminal file docket to the bill of costs each item of court costs charged by all county offices.
- Enter the amount of fine shown in the judge's docket on the bill of costs.
- In some cases, the judge will order the defendant to pay to the Clerk restitution to parties damaged as a result of the crime. If so, note that fact and the amount on the bill of costs.
- Sign the bill of costs, affix the Clerk's seal, and give the bill to the defendant.
- Issue a detailed receipt to the defendant for payment received and note payment in the criminal file docket.

Enter the payment into the office's accounting system. Each Clerk must maintain a fee record.

CCP Art. 103.010

CCP Art. 103.009

J. CURRENT FEES AND COURT COSTS

The Office of Court Administration has developed and made available on its website the County Clerk's Misdemeanor Court Cost Chart – Original Jurisdiction (effective 9/01/2013), which sets out the fees and costs that are to be assessed upon a defendant's conviction. Historical charts are also available on the OCA website at http://www.txcourts.gov/publications-training/publications/filing-fees-courts-costs/criminal-court-costs-historical-charts.aspx.

K. INDIGENT DEFENDANTS AND DEFENDANTS WHO REFUSE TO PAY

Incarceration of an indigent person for failure to immediately pay a fine or court cost violates the equal protection clause of the fourteenth amendment to the United States Constitution, and is therefore impermissible. However, persons able but unwilling to pay fines and court may be incarcerated for their failure to pay. In 2013, Senate Bill 393 and Senate Bill 395 amended Article 43.091 of the Code of Criminal Procedure regarding waiver of payment of fines and costs for certain defendants who were children at the time the offense was committed and to authorize a judge to allow a child defendant charged with or convicted of an offense over which a municipal or justice court has jurisdiction to elect at the time of conviction to discharge the fine and costs by performing community service or receiving tutoring as an alternative to paying the fine and costs.

Gustanson v. State, 666 S.W.2d 183 (Tex. App.-Dallas 1983, pet. ref'd)

Tate v. Short, 401 U.S. 395, 91 S. Ct. 668, 28 L.Ed.2d 130 (1971)

SB 393 and SB 395 (83rd Leg.)

When a defendant fails to pay fines and court costs, the court is required to hold a hearing at which the defendant is able to offer an explanation as to why he or she did not pay. For purposes of a hearing described by Article 43.03, Subsection (d), Code of Criminal Procedure, a defendant may be brought before the court in person or by means of an electronic

CCP Art. 43.03 Art. 43.03(f) Art. 43.015 Art.43.05

broadcast system through which an image of the defendant is presented to the court. An "electronic broadcast system" means a two-way electronic communication of image and sound between the defendant and the court and includes Internet videoconferencing. Defendants may be given notice to appear for the hearing. Alternatively, a judge may issue a capias pro fine which commands law enforcement to arrest the defendant and bring him or her before the court immediately. A capias pro fine authorizes a peace officer to place the defendant in jail until the business day following the date of the defendant's arrest if the defendant cannot be brought before the court immediately. The defendant may be ordered to sit out the fine and costs in jail (generally at the rate of $50 per day) following the hearing only if the court makes a written determination that either:

Art. 43.09

1. The defendant is not indigent and has failed to make a good faith effort to discharge the fines and costs.
2. The defendant is indigent and
    a. has failed to make a good faith effort to discharge the fines and costs under Article 43.09(f) [community service and
    b. could have discharged the fines and costs under Article 43.09 without experiencing any undue hardship.

If the court does not make the foregoing determinations, then the court may not order that the defendant be confined in jail. Rather, the court may order the defendant to discharge the fines and costs by performing community service. A court in a county that operates an electronic monitoring program or contracts with a private vendor to operate an electronic monitoring program under Section 351.904, Local Government Code, or that is served by a community supervision and corrections department that operates an electronic monitoring program approved by the community justice assistance division of the Texas Department of Criminal Justice, may require a defendant who is unable to pay a fine or costs to discharge all or part of the fine or costs by participating in the program. A defendant who participates in an electronic monitoring program under this subsection discharges fines and costs in the same manner as if the defendant were confined in county jail. Also, the court may waive payment of the fines and costs if the defendant is indigent and the performance of community service would impose and undue hardship on the defendant.

CCP Art. 43.091

CCP Art. 43.09(e)

Time that the defendant spends in jail in lieu of payment should be noted by the Clerk in the criminal file docket so that the defendant is not billed again at a later date. The Clerk will obtain a written receipt from the sheriff detailing the total jail time credit given and the total cash credit.

L. BONDS

At the time a criminal case is filed with the Clerk, the defendant will frequently already have been arrested, jailed and released on bond under the authority of a magistrate. In such cases, the Clerk should receive the bond and file the charging instrument in the case folder.

CCP Art. 17.01

At other times, the defendant will be in jail or arrested on the Clerk's capias and will desire to make bond subsequent to the time of filing. Only the judge can set the amount of bond and authorize its issuance, but the Clerk should receive the bond for safekeeping.

1. Personal or Surety Bond

If the judge grants a personal or surety bond, no cash is actually posted as the judge accepts the word of the parties that the amount of the bond will be paid to the state if the defendant does not appear in court at the proper time. The entire proceeding takes place before

CCP Art. 17.03 Art. 17.031 Art. 17.04

the judge, and the Clerk has no responsibility in the matter except to file the bond after its execution. If the defendant is released on a personal bond on the recommendation of a personal bond office, a fee of $20.00 or 3% of the amount of bail, whichever is greater, will be assessed. Personal bond offices do not exist in all counties. The fee should never be assessed in counties that do not have personal bond offices. In counties that do have personal bond offices, the fee should be assessed only if the personal bond office recommended the personal bond. The court may waive the fee or assess a lesser fee if good cause is shown. A personal bond pretrial release office must prepare a record containing information about any accused person identified by case number only who, after review by the office, is released by a court on a personal bond; must update the record on a monthly basis; and must file a copy of the record in the office of the Clerk of the county court in any county served by the office.

Art. 17.42

SB 882 82nd Leg.

2. Cash Bond

If the judge requires that cash in the amount of the bond be posted, the Clerk receives and holds the money in most counties.

CCP Art. 17.02

> ***NOTE:*** *In counties where the sheriff retains both cash and surety bonds, the procedures will differ from those stated below and should comply with Attorney General Opinion JC-0163.*

- The defendant will be brought before the Clerk, and the Clerk will fill out the bond form according to the judge's instructions.
- The Clerk collects the money, issues a receipt, and posts the amount in the criminal file docket in the same manner as other court costs.
- The judge signs the bond, and it is processed as any other instrument in the case and filed in the case folder. (Some Clerks prefer to keep a separate file for all bonds.)
- To refund the cash bond, the judge must enter an order to the Clerk, authorizing the transaction and stating to whom the refund is to be made and in what amount.
- HB 1658 (82nd Legislature) amended Article 17.02, Code of Criminal Procedure. The statute now allows for the return of cash bail bonds to the person who posted the money and was given a receipt. No longer must the money be returned only to the defendant.

HB 1658 82nd Leg.

- The amended statute now conflicts with Section 117.055 of the Local Government Code. That section required Clerks to retain the lesser of $50 or 5% of the cash bond amount. When two statutes are in irreconcilable conflict, the latest statute in time controls and in this case Article 17.02 will control. Therefore, Clerks **cannot** continue to make the withholding of $50 or 5%.

AG Opinion No. JC-0163

3. Payment by Surety when Posting Bond

When a surety posts a bond, the surety must pay a $15 cost to the officer taking the bond. The cost cannot exceed $30 for all bonds posted at that time for a particular individual. The cost is not required on the posting of a personal bond or a cash bond.

Gov't Code Sec. 41.258(b)

M. BOND FORFEITURE

As a condition of being released on bond, a defendant promises to appear in court at a particular time. If the defendant does not appear as promised, the defendant's name is to be called distinctly at the courthouse door (or outside the door of the relevant courtroom). If the defendant does not appear within a reasonable time after his or her name is called, then certain

CCP Art. 22.01

actions are initiated that can lead to the forfeiture of the defendant's bond.

Upon the failure of a defendant to appear in court, the judge shall enter a judgment that the State of Texas recover the amount of the bond from the defendant. This judgment, known as a "judgment nisi," is not a final judgment but rather a provisional judgment. The judgment nisi will be made final unless good cause is shown for why the defendant did not appear in court. The Clerk should record the judgment nisi in the criminal minutes of the court.

CCP Art. 22.02

The judge's signing of the judgment nisi effectively serves to initiate a criminal action (governed by the rules of civil procedure) in which the State attempts to obtain a final judgment forfeiting the defendant's bond to the State.

AG Op. GA-0486 (2006

The Clerk is to issue citation (with a copy of the forfeited bond attached) notifying the defendant's surety or sureties that the bond has been provisionally forfeited and requiring the sureties to appear and show cause as to why the judgment nisi should not be made final. A citation to a surety who is an individual is to be served to the individual at the address shown on the face of the bond. A citation to a surety that is a corporation must be served to the attorney designated for service of process by the corporation. A surety may waive service of citation by filing a written waiver with the Clerk. By the same method, a surety may designate a person other than the surety or the surety's attorney to receive service of citation.

CCP Art. 22.03 Art. 22.04

Notice to the defendant is required only if he or she has provided a contact address on the bond. Notice to the defendant is to be made by regular United State mail. A copy of the provisional judgment of forfeiture (the "judgment nisi") must be attached to the citation.

CCP Art. 22.05

Please note that the judgment nisi does not serve to do away with the underlying criminal charge. Criminal proceedings are resumed after the defendant is apprehended.

> ***NOTE:*** *A District Attorney does not have to pay a fee to the County Clerk to file an abstract of judgment issued against a principal or surety in a bond forfeiture proceeding.*

AG Op. JM-779 (1987)

1. Release of Surety

A surety to a bond may wish to be released from his or her responsibility if he feels that the defendant may not appear as specified.

CCP Art. 17.19

The surety must file an affidavit with the Clerk that gives notice of the surety's intention to surrender the principal.

- If the judge finds that cause exists for the surety to surrender his or her principal, then the Clerk issues a warrant for the defendant's arrest, or a capias, and gives it to the sheriff for his or her execution and return.
- The Clerk does not release the bond until the defendant has been placed in custody by the sheriff.
- When the defendant is in custody, the Clerk releases the bond to the surety and files the release of surety in the case folder.

N. APPEALS FROM LOWER COURTS

Clerks of justice or municipal courts will direct appeals from those courts to the County Clerk once the appeal is perfected in the lower court. The County Clerk should:

CCP Art. 45.042

- File-mark all instruments.

AG Op. JM-318

- Assign a county court case number. *(1985)*
- Enter the case in the criminal file docket (noting on the docket the court from which the case is appealed)
- Create the judge's docket.
- File all instruments in the case jacket.
- Process the appeal from the lower court as any other criminal case.

If the defendant is found not guilty, the case is dismissed and no fines or costs are assessed. If the defendant is found guilty and the appeal is from a municipal court, then the Clerk is to collect and return the fine to the municipal court but retain the costs. If the defendant is found guilty and the appeal is from a justice court, the Clerk is to retain both the costs and the fine.

O. WRIT OF HABEAS CORPUS

1. Introduction

A writ of habeas corpus is a special type of order issued by a judge. The writ is directed to a person (such as a county sheriff) who is holding another person in custody. The writ directs the sheriff (or other similarly situated person) to produce the person who is confined (usually someone in jail or in prison) at a certain place and time to show the reason the confined person is in custody. *CCP Art. 11.01 Art. 11.02*

The writ of habeas corpus is generally sought by an individual who is in jail or prison and wishes to be released. In order to have a writ of habeas corpus issued, the prisoner must first present an application (sometimes termed a motion or petition) to an appropriate judge for the purpose of having the judge issue a writ of habeas corpus. Usually, the prisoner (or a person on the prisoner's behalf) will present the application to the Clerk. The Clerk cannot require a filing fee. *CCP Art. 11.12 Art. 11.05 Art. 11.13 Art. 11.051*

Upon the presentation of a proper application, the judge is duty-bound to issue a writ of habeas corpus without delay. *CCP Art. 11.05 Art. 11.15*

When a County Clerk is presented with an application for a writ of habeas corpus, the Clerk must determine whether the writ application is being made "pre" or "post" conviction, and whether the judgment imposes the penalty of death. The distinguishing factor between types of applications for writs of habeas corpus is whether there has been a conviction entered. While the practice has traditionally been to distinguish between "pre-trial" and "post-conviction" writs, the Code of Criminal Procedure distinguishes primarily between writ applications in cases in which no conviction is entered and applications in cases where there is a final felony conviction without the death penalty. This manual covers the procedure for pre-conviction writs.

2. Pre-Conviction Application for Writ of Habeas Corpus

For pre-conviction applications, it is suggested that a numerical extension, such as a dash and a number 1 (*e.g.*, "-1"), be added after the case number to designate the first writ, a "-2" for the second writ, etc. The Clerk should:

a. Determine in which case to file the application (*i.e.,* deciding which case number to assign to the application). Ideally, the County Clerk will maintain a separate "writ" docket for the purpose of assigning case numbers to applications which pertain to confinement for an offense which has not yet been

charged in court.

- If the applicant (defendant) is being confined pursuant to a charging instrument which is already filed in court, the application may be filed either in the pending case or as a new case on the writ docket (each County Clerk's office should formulate its own policy in conformity with state law).
- If the applicant is **not** being confined pursuant to a charging instrument which is already filed in court, the application should be filed as a new case on the writ docket. If a separate writ docket is not maintained, the application should be filed as a new case.

b. File the original application and file-mark two copies of the application.

- When the applicant or his attorney files the original application, the applicant or his attorney should also furnish the Clerk with two copies of the application. The Clerk will file-mark the two copies. If the application is made *pro se*, copies may not be demanded; however, if the applicant is not confined and presents the application in person, the County Clerk may require that an original and two copies be presented. (The Code of Criminal Procedure neither authorizes nor forbids this; each Clerk's office should formulate its own policy.) If the application is made *pro se* and the applicant is confined, the Clerk should make two copies of the application and file-mark them.

c. Mail or deliver some form of acknowledgment of filing to the applicant. A postcard or a file-marked copy noting the date of the filing of the application should suffice.

d. Mail or deliver a file-marked copy of the application to the County Attorney's office.

e. Mail or deliver a file-marked copy of the application to the judge's office.

f. After the writ application has been filed, the applicant has been delivered an acknowledgment, and the County Attorney and judge have received copies, there are no further requirements of the Clerk unless the trial court acts upon the writ, and then **only** in the event that notice of appeal is given.

TRAP 31.1

When a written notice of appeal from a judgment or an order in habeas corpus proceedings is filed, the appellate procedures are the same as any criminal case, except the County Clerk has only fifteen days to prepare, certify, and forward the Clerk's record to the Court of Appeals. If the appellant requests, the court reporter must also prepare and certify the reporter's record and forward it to the Court of Appeals within fifteen days after the notice of appeal is filed. On reasonable explanation, the appellate court may shorten or extend the time to file the record.

TRAP 34.5 and 34.6

The Clerk's record and reporter's record must be prepared as in any criminal case.

P. APPEALS OF CRIMINAL CASES

1. Jurisdiction

The jurisdiction for appeals of all criminal cases from the district or county courts is with the court of appeals within the particular district, except in those cases in which the death penalty has been assessed. Jurisdiction of cases in which the death penalty has been assessed is with the Court of Criminal Appeals. It is the responsibility of the Clerk in all appeal cases to prepare the Clerk's record and forward it to the court of appeals or the Court of Criminal Appeals.

2. Perfecting Appeal in a Criminal Case

In a criminal case, appeal is perfected by timely filing a sufficient notice of appeal. In a death penalty case, however, it is unnecessary to file a notice of appeal, but, in every death-penalty case, the clerk of the trial court shall file a notice of conviction with the Court of criminal Appeals within thirty days after the defendant is sentenced to death. *TRAP 25.2(b)*

a. Notice of Appeal

Notice must be given in writing and filed with the trial court Clerk. *TRAP 25.2(c)*

Notice is sufficient if it shows the party's desire to appeal from the judgment or other appealable order, and, if the State is the appellant, the notice complies with Code of Criminal Procedure Article 44.01. *TRAP 25.2(c)*

b. Certification of Defendant's Right of Appeal

If the defendant is the appellant, the record must include the trial court's certification of the defendant's right of appeal under TRAP 25.2(a)(2). An appeal must be dismissed if such a certification is not made part of the record. *TRAP 25.2(d)*

c. Clerk's Responsibility

The trial court Clerk must note on the copies of the notice of appeal, and the trial court's certification of the defendant's right to appeal, the case number and the date when each was filed. The Clerk must then immediately send one copy of each to the Clerk of the appropriate court of appeals and, if the defendant is the appellant, one copy of each to the State's attorney. *TRAP 25.2(e)*

d. Effect of Appeal

Once the record has been filed in the appellate court, all further proceedings in the trial court will generally be suspended until the trial court receives the appellate court mandate. *TRAP 25.2(g)*

3. The Appellate Record

There are two primary components of an appellate record: the Clerk's record and the reporter's record. *TRAP 34.1*

a. The Clerk's Record (formerly called the "transcript")

The Clerk's record must include copies of the following: *TRAP 34.5(a)*

- The indictment or information, any special plea or defense motion that was presented to the court and overruled, any written waiver, any written stipulation, and, in cases in which a plea of guilty or nolo contendere has been entered, any documents executed for the plea
- The court's docket sheet
- The court's charge and the jury's verdict, or the court's findings of fact and conclusions of law
- The court's judgment or other order that is being appealed
- Any request for findings of fact and conclusions of law, any post-judgment motion, and the court's order on the motion
- The notice of appeal
- Any formal bill of exception

- Any request for a reporter's record, including any statement of points or issues provided for under TRAP Rule 34.6(c)
- Any request for preparation of the Clerk's record
- The trial court's certification of the defendant's right of appeal under TRAP 25.2
- Any filing that a party designates to have included in the record

At any time before the Clerk's record is prepared, any party may file with the trial court clerk a written designation specifying matters for inclusion in the Clerk's record; the designation must be specific and the Clerk will disregard any general designation such as one for "all papers filed in the cause." A copy of the designation should be included in the Clerk's record. If a relevant item has been omitted from the Clerk's record, the trial court, the appellate court, or any party may, by letter, direct the Clerk to prepare, certify, and file in the appellate court a supplement containing the omitted item. An appellate court cannot refuse to file the Clerk's record or a supplemental Clerk's record because of failure to timely request items to be included in the Clerk's record. *TRAP 34.5(b),(c)*

If the appellate court in a criminal case orders the trial court to prepare and file findings of fact and conclusions of law as required by law, or certification of the defendant's right of appeal as required by the Rules of Appellate Procedure, the trial court Clerk must prepare, certify, and file in the appellate court a supplemental Clerk's record containing those findings of fact and conclusions of law. *TRAP 34.5(c)*

The Clerk may consult with the parties to determine the contents of the Clerk's record. *TRAP 34.5(h)*

b. The Clerk's Responsibility

The trial court Clerk is responsible for preparing, certifying, and timely filing the Clerk's record when a notice of appeal has been filed and the party responsible for paying for the preparation of the Clerk's record has paid the Clerk's fee, has made satisfactory arrangements with the Clerk to pay the fee, or is entitled to appeal without paying the fee.

To prepare the record, the Clerk must:

- Gather the documents required by TRAP Rule 34.5(a) and those requested by a party under TRAP Rule 34.5(b).
- Make a legible copy of the documents on opaque, white, 8½ x 11 inch paper, if practicable.
- Arrange the documents in ascending chronological order, by date of filing or occurrence.
- Consecutively number the pages in the bottom right-hand corner.
- Bind the documents in ascending chronological order, by date of filing or occurrence.
- Prepare, label and certify the Clerk's record as required by the Court of Criminal Appeals Order Directing the Form of the Appellate Record in Criminal Cases.

NOTE: *Many appellate courts now require the Clerk's record to be uploaded via their website rather than being delivery of a paper file.*

c. Indigent Criminal Defendants

An appellant who is unable to pay for the appellate record may file a motion and *TRAP 20.2*

affidavit within the time required to perfect an appeal asking the court to have the appellate record furnished without charge. If after hearing the motion the court finds that the appellant cannot pay or give security for the appellate record, the court must order the reporter to transcribe the proceedings without charge to the appellant.

4. Criminal Appellate Process and Timelines

The Clerk's responsibility in appeals is not only to prepare the Clerk's record but to coordinate the efforts of the attorneys, the judge, and the court reporter. Therefore, the Clerk must be aware of the entire appellate process.

TRAP 4

In criminal appellate matters, the beginning of the periods of time prescribed in the various rules, statutes, and orders of court is determined by the date sentence is imposed or suspended in open court. In computing any such period of time, the date of sentencing is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.

TRAP 21.2
TRAP 21.4
TRAP 21.8

A motion for new trial is not a prerequisite to presenting a point of error on appeal. However, if a motion for new trial is filed, it may be filed prior to, or must be filed within 30 days after, the date sentence is imposed or suspended in open court. Amended motions may be filed before any preceding motion for new trial is overruled and within 30 days after sentence. In the event an original or amended motion for new trial is not granted or denied by written order of the court within 75 days after the date of sentence, it will be considered overruled by operation of law.

TRAP 22

A motion in arrest of judgment may also be filed within 30 days of sentence and will be overruled by operation of law if not ruled on by oral or written order within 75 days of sentencing. An order overruling a motion in arrest of judgment will be considered an order overruling a motion for new trial for the purpose of giving notice of appeal.

TRAP 26.2

Notice of appeal must be given in writing and filed with the Clerk of the trial court. Appeal is perfected when notice of appeal is filed within 30 (20 by the State) days after the day sentence is imposed or suspended in open court, or the day an appealable order is signed by the trial judge; except, if a motion for new trial has been timely filed, notice of appeal must be filed within 90 days after the day sentence is imposed or suspended in open court. The Clerk must note upon the copies of the notice the number of the cause and the date that notice was filed and immediately send one copy to the Clerk of the appropriate court of appeals and one copy to the attorney for the State.

TRAP 42.2

A notice of appeal may be withdrawn at any time prior to the decision of the court of appeals. The withdrawal must be in writing, signed by the defendant and his or her attorney and filed in duplicate with the Clerk of the court of appeals, who must immediately forward the duplicate copy to the Clerk of the trial court.

TRAP 33.2(e)

Formal bills of exception must be filed in the trial court within 60 days after the sentence is pronounced or suspended in open court or if a timely motion for new trial has been filed, within 90 days after sentence is pronounced or suspended in open court. When formal bills of exception are filed, they should be included in the Clerk's record or in a supplemental Clerk's record.

TRAP 18.1
TRAP 18.4

When a mandate is returned on the appeal, the Clerk must file it with the papers of the case and note it upon the docket. The Clerk must also send an acknowledgment of the

mandate's receipt to the appellate Clerk.

If the defendant in a case on appeal has been on bail, upon receipt of the mandate affirming the judgment, the Clerk must issue a capias for the arrest of the defendant for the execution of the sentence of the court. The capias (commitment) must include a recitation of the conviction, which sets forth the offense and judgment and sentence of the court, the appeal and affirmation of the judgment and the filing of the capias. The capias commands the sheriff to arrest the defendant. The sheriff must notify the Clerk when the mandate has been carried out. *TRAP 51.2*

5. Format of the Clerk's Record

The format and the contents of the Clerk's record are critical. The form of the Clerk's record in criminal cases is prescribed by the Court of Criminal Appeals in its "Order Directing the Form of the Appellate Record in Criminal Cases." A copy of the order is set out in the appendix to the Texas Rules of Appellate Procedure and is included in the Forms section of this manual as Form III-1.

Q. EXPUNCTION OF CRIMINAL RECORDS

1. Right to Expunction

Chapter 55 of the Texas Code of Criminal Procedure contains the provisions relating to expunction of criminal records. The 82nd Legislature produced bills which made significant changes to the statutes governing expunction, including HB 351, SB 462, and HB 1573. It should be noted that these bills also provide an example of the situation which occurs when different bills amend the same portion of a statute, but amend it in different ways. The final updated version of Chapter 55 is now available through Texas Legislature Online at http://www.capitol.state.tx.us. The changes made by each bill are incorporated.

Expunction proceedings are filed in district courts. If a County Clerk receives an Order regarding an expunction, the Clerk must obey and comply with the Order.

R. ORDER OF NONDISCLOSURE

Whether a person may file a "petition for nondisclosure" is governed primarily by Section 411.081 of the Texas Government Code. Significant amendments of this statute took place during the 2011 82nd Legislature and more changes were implemented during the 2013 83rd Legislature. A person may file a "petition for nondisclosure" if six specific conditions are met: (1) the person has been placed on deferred adjudication community supervision; (2) the person has successfully completed the deferred adjudication; (3) the offense is not one which is in a category of offenses which are not eligible for an order of nondisclosure – which includes offenses that require registration as a sex offender, offenses involving family violence, and offenses under Texas Penal Code Sections 19.02, 19.03, 20.04, 22.041, 25.07, and 42.072; (4) the person does not have any disqualifying criminal history – which includes a prior conviction or deferred adjudication for an offense that requires registration as a sex offender, an offense involving family violence, or an offense under Texas Penal Code Sections 19.02, 19.03, 20.22.04, 22.041, 25.07, and 42.072; (5) the person has complied with the applicable waiting period; and (6) the person must not have been convicted of or placed on deferred adjudication for any criminal offenses during the time between the date you were placed on deferred adjudication and the date of the order of dismissal and discharge plus any applicable waiting period as stated above. The Office of Court Administration was statutorily directed in Section 411.081(f-1), Texas Government Code, to prescribe a form for filing a petition for

nondisclosure. This form is available at: http://www.txcourts.gov/rules-forms/forms.aspx The petition is to be filed with the Clerk of the court that placed the person on deferred adjudication. The petitioner is required to pay the filing fees for a regular civil lawsuit, as well as a special $28 fee at the time the petition is filed.

The Clerk must give notice of the filing of the petition to the State. The judge is required to hold a hearing to determine whether the person is entitled to file the petition and whether the issuance of an order of nondisclosure is in the best interest of justice unless the state does not request a hearing before the 45th day after the date on which the state received notice and if the court determines that the defendant is entitled to file the petition and the order is in the best interest of justice. If the person is entitled to file the petition and the issuance of an order is in the best interest of justice, the judge must issue an order of nondisclosure. This order prohibits criminal justice agencies from disclosing to the public criminal history record information related to the offense giving rise to the deferred adjudication.

Upon issuance of an order of nondisclosure by the judge, the Clerk must send a copy of the order by secure electronic mail, electronic submission, or facsimile transmission or otherwise by certified mail to:

Department of Public Safety
Crime Records Service
5805 N. Lamar Blvd.
P.O. Box 4087
Austin, Texas 78773-0252

No additional charge should be assessed for sending a copy of the order to DPS. The $28 fee covers this charge.

CHAPTER 4

SUPPORTING THE CIVIL COURTS

A. INTRODUCTION TO THE CIVIL COURTS

Civil cases do not deal with criminal actions, but rather with disputes between private parties. A *civil case* can be defined as a personal action instituted to compel payment or the performance of some other act. The end purpose of most civil cases is to obtain a judgment for money, but judgment is sometimes sought to either compel or enjoin some action.

Gov't Code
Sec. 27.031
Sec. 26.042
Sec. 25.0003
Sec. 25.0332
Sec. 25.0732

Chapa v. Spivey, 999 S.W.2d 833 (Tex.App.—Tyler 1999, no pet.)

HB 79
82nd Legislature

The various courts in Texas have overlapping jurisdiction in civil cases. The exact jurisdictional parameters of a given type of court may vary widely from one location to another. The justice of the peace courts have jurisdiction of civil cases in which the amount in controversy is not more than $10,000. Constitutional county courts have jurisdiction of civil cases where the amount in controversy is greater than $200 but no more than $10,000. Generally, statutory county courts have the same civil jurisdiction as county courts. Certain statutory county courts have jurisdiction over cases with higher maximum amounts in controversy. For example, statutory county courts in Cameron County have jurisdiction in civil cases where the amount in controversy does not exceed $1 million. El Paso County courts at law have no upper "amount-in-controversy" limit. HB 79 from the 82nd Legislature raised the civil jurisdiction of statutory county courts to $200,000. The statutory county courts which had higher "amount-in-controversy" limits retain those higher limits. Additionally, county courts at law exercise jurisdiction over appeals of final rulings of the Texas Workers' Compensation Commission, regardless of the amount in controversy. District courts have jurisdiction in civil cases where the amount in controversy exceeds either $200 or $500. Although HB 79 set the lower amount at $500, some questions remain regarding this issue. When the amount in controversy is in an amount where different courts have jurisdiction (*e.g.*, $1,000) then a plaintiff may file in any one of the courts with jurisdiction.

Gov't Code
Sec. 25.0003 (d), (e)

A statutory county court has — concurrent with the county court — the probate jurisdiction provided by general law for county courts; however, in a county that has a statutory probate court, that statutory probate court is the only county court created by statute with probate jurisdiction.

Gov't Code
Sec. 25.003 (f)

A statutory county court does not have the jurisdiction of a statutory probate court granted statutory probate courts by the Texas Probate Code.

> ***NOTE:*** *Regarding county courts, the term "amount in controversy" encompasses attorney fees but not court costs or interest.*

AG Op.
JM-409 (1985)

Gov't Code
Sec. 26.043

Constitutional county courts do not have jurisdiction in civil cases of the following types no matter what the dollar amount in controversy:

- Damages for slander or defamation of character
- Suits for the enforcement of a lien on land
- Suits in behalf of the state for escheat
- Suits for divorce
- Suits for the forfeiture of the charters of corporations

- Suits for the trial of the right to property valued at $500 or more and levied under a writ of execution, sequestration, or attachment
- Eminent domain cases
- Suits for recovery of land

Generally, statutory county courts do not have jurisdiction of the above-listed matters either. But some statutory county courts do have jurisdiction over some of the matters listed above. For example, the Bee County Court at Law has concurrent jurisdiction with the district court in family law cases. Clerks should be familiar with the statutory provisions in Chapter 25 of the Government Code which create the various statutory county courts and delineate their jurisdiction. Both constitutional county courts and statutory county courts have appellate jurisdiction over civil cases originally heard in justice courts in which the judgment appealed from or the amount in controversy exceeds $250.

Gov't Code Sec. 25.0152
Sec. 26.042(e)

B. COSTS ON APPEAL TO COUNTY COURT

If the appellant fails to pay the costs on appeal from a judgment of a justice of the peace or small claims court within twenty (20) days after being notified to do so by the County Clerk, the appeal shall be deemed not perfected and the County Clerk shall return all papers in the cause to the justice of the peace having original jurisdiction and the justice of the peace shall proceed as though no appeal had been attempted. *See* Form IV-1.

TRCP 143a

> ***NOTE:*** *Two appellate courts have held that the method of service of the notice of costs is governed by Rule 21a, Texas Rules of Civil Procedure, which provides that notice is to be sent to an appellant or his attorney in person or by registered or certified mail, unless the court directs the County Clerk to send notice by regular mail.*

DePue v. Henderson, 801 S.W.2d 178 (Tex. App. – Houston [14th Dist.] 1990, no writ)

Farmer v. McGee Services, 704 S.W.2d 927 (Tex.App. – Tyler 1986, no writ)

When an appeal from justice court has been perfected, the justice is to make out a copy of all docket entries in the cause, officially certify the copy and then immediately send it together with a certified copy of the bill of costs taken from his or her fee book and the original papers in the cause to the County Clerk.

TRCP 574

C. FEES

1. Fees Generally

The statutes generally specifying the fees of the County Clerk are set out below.

SUBCHAPTER C. FEES OF CLERK OF COUNTY COURT

Sec. 118.051. CLERICAL DUTIES. Except as provided by Sec. 118.067, the fees listed in this subchapter for county civil court dockets under Section 118.052(1) and county probate court dockets under Section 118.052(2) are fees for all clerical duties performed in connection with the docket, including:

Local Gov't Code Sec. 118.051

1. filing, registering or recording, docketing, and taxing costs for an application, will, complaint, petition, return, document, or proceeding;

2. issuing and recording the return of a citation, notice, subpoena, commission to take depositions, execution while the docket is still open (civil docket), garnishment before judgment (civil docket), order, writ, process, or any other document authorized or required to be issued by the Clerk on which a return must be recorded;
3. attendances in court as Clerk of the court;
4. impaneling a jury (civil docket);
5. swearing witnesses;
6. approving bonds involved in court action; and
7. administering oaths.

Sec. 118.052. FEE SCHEDULE. Each Clerk of a county court shall collect the following fees for services rendered to any person: *Local Gov't Code Sec. 118.052*

(1) CIVIL COURT ACTIONS

(a) Filing of Original Action (Sec. 118.053): *Local Gov't Code Sec. 118.053*

(i) Garnishment after judgment $15.00

(ii) All others $40.00

NOTE: *A County Clerk is authorized to assess a fee of $40 for condemnation proceedings filed in county court, but such fee is not due until either an objection is filed to the condemnation or a judgment is entered.* *AG Op. DM-26 (1991)*

NOTE: *The State is exempt from <u>advance</u> payment of filing fees. However, the State must ultimately pay filing fees and other court costs if the State is liable for costs of court.*
If the state prevails in a lawsuit, the opposing party shall pay the entire amount of any filing fee attributed to the state, including any amount exempted under Section 8.01 Civ. Prac. & Rem. *Civ. Prac. & Rem Code Sec. 6.001 Sec. 8.02*

AG Op. DM-459 (1997)

(b) Filing of Action Other Than Original (Sec. 118.054)..... $30.00 *Local Gov't Code Sec. 118.054*

(c) Services Rendered After Judgment in the Original Action (Sec. 118.0545): *Local Gov't Code Sec. 118.0545*

(i) Abstract of Judgment .....……$5.00

(ii) Execution, order of sale, writ or other process $5.00

(2) PROBATE COURT ACTIONS

(a) Probate Original Action (Sec. 118.055): *Local Gov't Code Sec. 118.055*

(i) Probate of a will with independent executor, administration with will attached, administration of an estate, guardianship or receivership of an estate, or muniment of title ..$40.00

(ii) Community survivors.....$40.00

(iii) Small estates $40.00

(iv) Declarations of heirship $40.00

(v) Mental Health or chemical dependency services $40.00

(vi) Additional, special fee (Sec. 118.064) $5.00

NOTE: *The additional, special fee mentioned directly above is to be paid for each original action filed in a probate court and is in addition to all other fees. The fee is deposited in the county's general fund and is usually used for the continuing education of the judge and staff of the probate courts.*

Local Gov't Code Sec. 118.064

(b) Services in Pending Probate Action (Sec. 118.056):

Local Gov't Code Sec. 118.056

(i) Filing an inventory and appraisement as provided by Sec. 118.056(d) $25.00

(ii) Approving and recording bond $3.00

(iii) Administering Oath.....$2.00

(iv) Filing annual or final account of estate $25.00

(v) Filing application for sale of real or personal property $25.00

(vi) Filing annual or final report of guardian of a person $10.00

(vii) Filing a document not listed under this paragraph after the filing of an order approving the inventory and appraisement or after the 120th day after the date of the initial filing of the action, whichever occurs first, if more than 25 pages $25.00

(c) Adverse Probate Action (Sec. 118.057) $40.00

Local Gov't Code Sec. 118.057

(d) Claim Against Estate.....$2.00

NOTE: *The fees for "Services in Pending Probate Action" under LGC Sec. 118.052(2) for services in an action in an open probate docket rendered after the filing of an order approving the inventory and appraisement or after the 120th day after the initial filing of the action, whichever occurs first.*

Local Gov't Code Sec. 118.056

(e) Supplemental court Initiated Guardianship fee $20.00

Local Gov't Code Sec. 118.067

(f) Supplemental Public Probate Administrator Fee For Counties That Have Appointed a Public Probate Administrator $10.00

Local Gov't Code Sec. 118.068
HB 1755 (83rd Leg.)

(3) OTHER FEES

(a) Issuing Document (Sec. 118.059): *Local Gov't Code Sec. 118.059*

original document and one copy.....$4.00
each additional set of an original and one copy.....$4.00

(b) Certified Papers (Sec. 118.060): *Local Gov't Code Sec. 118.060*

for the Clerk's certificate $5.00
plus a fee per page or part of a page of.....$1.00

(c) Noncertified Papers (Sec. 118.0605): *Local Gov't Code Sec. 118.0605*
for each page or part of a page $1.00

(d) Letters Testamentary, Letter of Guardianship, Letter of Administration, or Abstract of Judgment (Sec. 118.061).....$2.00 *Local Gov't Code Sec. 118.061*

(e) Safekeeping of Wills (Sec. 118.062).....$5.00 *Local Gov't Code Sec. 118.062*

(f) Mail Service of Process (Sec. 118.063) ..... same as sheriff *Local Gov't Code Sec. 118.063*

(g) Records Management and Preservation Fee (Sec. 118.0546).$5.00 *Local Gov't Code Sec. 118.0546*

Sec. 118.053. FILING OF ORIGINAL ACTION. *Local Gov't Code Sec. 118.053*

(a) The fee for "Filing of Original Action" under Section 118.052(1) is for all clerical duties in connection with an original action filed in a county civil court.

(b) The fee is charged of the plaintiff or appellant and is due at the time the cause is filed. Only one fee is due in each action.

(c) The fee does not apply to actions for which another fee is prescribed by Section 118.052(2) or 118.052(3).

(d) "Original action" includes an appeal from a justice of the peace or a corporation court and a transfer of an action from another jurisdiction.

NOTE: *The $40 initial filing fee covers all clerical services involved in handling the case. These clerical services include the receiving, filing, indexing, and recording of all instruments and the issuing, including the recording of the return thereon, of all citations, notices, subpoenas, etc.* *AG Op. JM-533 (1986) JM-727 (1987) JM-1229 (1990)*

State and Federal Agencies exempt from Bond for Court Costs and Appeal. *TRCP Sec. 6.001(a) (c)*
(c) a county or district attorney is not exempted from filing a bond to take out an extraordinary writ unless the commissioners court of the county approves the exemption in an action brought in behalf of the county or unless the attorney general approves the exemption in an action brought in behalf of the state.

Sec. 118.054. FILING OF ACTION OTHER THAN ORIGINAL. *Local Gov't Code Sec. 118.054*

(a) The fee for "Filing of Action Other than Original" under Section 118.052(1) is for filing of each interpleading, cross action, or action other than the original action.

(b) The fee is charged of the party initiating the action and is due at the time the action is initiated. Only one fee is due for each such action.

(c) The fee does not apply to actions for which another fee is prescribed by Section 118.052(2) or 118.052(3).

Sec. 118.0545. SERVICES RENDERED AFTER JUDGMENT IN ORIGINAL ACTION. *Local Gov't Code Sec. 118.0545*

(a) The fees for "Services Rendered After Judgment in Original Action" under Section 118.052(1) are for services rendered after judgment in an original action filed in a county civil court.

(b) The fee for an "Abstract of judgment" under Section 118.052(1) is for issuing an abstract of judgment.

(c) The fee for an "Execution, order of sale, writ, or other process" under Section 118.052(a) is for issuing and recording the return on any of those documents. The fee applies only to a writ or process for the issuance of which another fee is no provided by this subchapter.

(d) The fee is charged of the party requesting the service and is due at the time the service is requested.

(e) In this section, "original action" has the meaning assigned by Section 118.053.

Sec. 118.0546. RECORDS MANAGEMENT AND PRESERVATION FEE - CIVIL CASES. *Local Gov't Code Sec. 118.0546*

(a) The fee for Records Management and Preservation under Section 118.052 is for the records management and preservation services performed by the county as required by Chapter 203.

(b) The fee shall be assessed as cost and must be paid at the time of filing any civil case or ancillary pleading thereto.

(c) The fee shall be placed in a special fund to be called the records management and preservation fund.

(d) The fee shall be used only for records management and preservation purposes in the county. No expenditure may be made from this fund without prior approval of the commissioners court.

NOTE: *Section 118.0645(b) also requires the assessment of a records management and preservation fee at the time of filing any probate case (as opposed to other civil cases) and adverse probate action.*

Sec. 118.059. ISSUING DOCUMENT. *Local Gov't Code Sec. 118.059*

(a) The fee for "Issuing Document" under Section 118.052(3) is for issuing an original document and one copy and includes recording the return of the document.

(b) The fee for issuing for the same action at the same time more than one set of an original and one copy of the same document includes recording the return of the document. The fee must be paid at the time the order is placed.

(c) In this section, "document" includes a citation, notice, commission to take depositions, execution, order, writ, process, or other instrument or paper authorized or required to be issued by the Clerk.

Sec. 118.060. CERTIFIED PAPERS, NO RETURN REQUIRED. *Local Gov't Code Sec. 118.060*

(a) The fees for "Certified Papers" under Section 118.052(3) are for the County Clerk's certificate that shall be placed on each page or part of a page, and a fee for copying each page or part of a page, of a notice, statement, transcript, or other document authorized or required to be issued by the Clerk.

(b) The fee must be paid at the time the order is placed.

NOTE: *The fee generally includes all costs associated with locating and providing copies.* *AG Op. JC-0292 (2000)*

Sec. 118.0605. NONCERTIFIED PAPERS. *Local Gov't Code Sec. 118.0605*

(a) The fee for "Noncertified Papers" under Section 118.052(3) is for issuing a noncertified copy of each page or part of a page of a document.

(b) The fee must be paid at the time the order is placed.

Sec. 118.061. LETTERS AND ABSTRACTS. The fee for Letters Testamentary, Letter of Guardianship, Letter of Administration, or Abstract of Judgment under Section 118.052(3) is for the issuing of any of those documents. *Local Gov't Code Sec. 118.061*

Sec. 118.062. SAFEKEEPING OF WILLS. The fee for "Safekeeping of Wills" under Section 118.052(3) is for filing and keeping wills held for safekeeping. The fee must be paid at the time the will is filed. *Local Gov't Code Sec. 118.062*

Sec. 118.063. MAIL SERVICE OF PROCESS. The fee for "Mail Service of Process" under Section 118.052(3) is for the Clerk's service of process by certified or registered mail. The fee is the same amount that sheriffs and constables are authorized to charge under Section 118.131. *Local Gov't Code Sec. 118.063*

Sec. 118.065. FREE ACCESS TO RECORDS. *Local Gov't Code Sec. 118.065*

(a) This subchapter does not limit or deny any person full and free access to any document referred to in this subchapter. A person is entitled to read, examine, and copy from those documents or from any microfilm or other photographic image of the documents. *AG Op. DM-30 (1991)*

(b) A person may, without paying any charge, exercise the right provided by this section under the reasonable rules of the County Clerk at all reasonable times during the hours in which the Clerk's office is open to the public.

Sec. 118.066. PROHIBITED FEES. A County Clerk is not entitled to a fee for: *Local Gov't Code Sec. 118.066*

1. the examination of a paper or record in the Clerk's office;
2. filing any process or document the Clerk issues that is returned to court;
3. a motion or judgment on a motion for security for costs; or,
4. taking or approving a bond for costs.

2. Fees Collected in Some Cases, Depending on the Governing Body of the County

Alternative Dispute Resolution System .....n.t.e. $15.00 *Civ. Prac. & Rem. Code Sec. 152.004*
(not collected in suits for delinquent taxes, condemnation proceedings, and mental health cases)

Appellate Judicial System Fund .....n.t.e. $5.00 *Gov't. Code Sec. 22.2021 Sec. 22.2031 HB 410 (83rd Leg.) Sec.22.2051 Sec. 22.2061 Sec. 22.2141 Sec. 22.2041 Sec. 22.2121*
(for counties in 1st, , 4th, 5th, 13th and 14th Court of Appeals Districts)

for counties in 2nd, 3rd and 11th Court of Appeals District $5.00

Law Library …….. .....n.t.e. $35.00 *Local Gov't. Code Sec. 323.023*

Contingency Fund for Self-Insurance.....n.t.e. $5.00 *Local Gov't Code Sec. 82.003(c)*

Statutory County Court Fee .....$40.00 *Gov't Code Sec. 51.702(a)*

Constitutional County Court Fee .....$40.00 *Gov't Code Sec. 51.703(a)*
(in counties where the judge is entitled to a state salary supplement)

Statutory Probate Court Fee .....$40.00 *Gov't Code Sec. 51.704(a)*

A Clerk may not collect more than a total of $40.00 for filing fees. Clerks are prohibited from collecting both a statutory county court fee and a fee under sec. 51.703. Clerks also may not collect both a probate fee and the statutory county court fee. *Gov't Code Sec. 51.703(f) Sec. 51.704(i)*

NOTE: Additional filing fees are allowed in Dallas and Hays Counties *Gov't Code Sec. 51.705 Sect. 51.707*

Service by Sheriff or Constable .....reasonable *Local Gov't Code Sec. 118.131*

Courthouse Security Fee.....n.t.e. $5.00

The commissioners court may set a fee not to exceed $5.00 for courthouse security to be collected by the Clerk at the time of filing in each civil case filed in a county court or a *Local Gov't Code Sec. 291.008(a)*

county court at law, as well as in a statutory probate court or another statutory court exercising the jurisdiction of a probate court.

AG Op. DM-283 (1994)

In any civil case brought by the state or a political subdivision of the state in a county court or a county court at law in a county in which the commissioners court has adopted a courthouse security fee in which the state or political subdivision is the prevailing party, the amount of that fee shall be taxed and collected as a cost of court against each nonprevailing party.

Local Gov't. Code Sec. 291.008(b)

> ***NOTE:*** *The not-to-exceed $5.00 security fee is cumulative of other filing fees that the Clerk collects as costs of court. If the commissioners court chooses to impose a security fee, it may not delegate to the Clerk of the court the responsibility of setting the amount of the fee.*

AG Op. DM-283 (1994)

If a commissioners court sets a courthouse security fee not to exceed $5.00 under Section 291.008(a) of the Local Government Code, the County Clerk must collect a fee of $1.00 for filing any document not subject to the security fee. The county is not liable for the costs. The County Clerk must collect this fee.

Local Gov't. Code Sec. 291.008(d)

> ***NOTE:*** *Pursuant to section 291.007[now Sec. 291.008] of the Local Government Code, a commissioners court may set a security fee not-to-exceed $5.00, which the Clerk must collect at the time of filing in each civil case filed in a county court, county court at law, and district court, as well as in a statutory probate court or another statutory court exercising the jurisdiction of a probate court. If the commissioners court sets such a security fee, the Clerk also must collect a security fee of one dollar for filing each document that is not related to an existing civil or criminal case (as long as no other statute specifically exempts the document from the imposition of a fee such as the fee Section 291.007 of the Local Government Code [now Section 291.008] authorizes a Clerk to collect). The $1.00 security fee is <u>not</u> to be assessed upon the filing of each individual document filed after the initial pleading in a civil case.*
>
> *The $1.00 security fee levied on a document not subject to the not-to-exceed $5.00 security fee is cumulative of any other fees that a Clerk collects upon the filing of the document*

AG Op. DM-283 (1994)

> ***NOTE:*** *The Office of the Attorney General held in Attorney General Opinion DM-371 that a County Clerk may collect the $1.00 security fee that Section 291.008(d) of the Local Government Code authorizes only on documents filed with the County Clerk as County Clerk. The County Clerk may not collect the $1.00 security fee on birth, death, or fetal death records filed with the County Clerk in his or her capacity as local registrar. To the extent that Attorney General Opinion DM-283 is inconsistent with DM-371, it is modified.*

AG Op. DM-371 (1995)

3. Additional Filing Fee for Basic Civil Legal Services for Indigents

The Clerk of a statutory or constitutional county court shall collect a fee of $10.00 on the filing of any civil action or proceeding requiring a filing fee.

Local Gov't Code Sec. 133.153

4. Family Protection Fee

The commissioners court shall adopt a family protection fee in an amount not to exceed $15.00.

The Clerk is to collect a fee of not more than $15 at the time a suit for dissolution of marriage is filed. The fee cannot be collected from a person protected by a protective order. These fees are deposited to a county family protection account, which may be used only to support local service providers offering family violence-related services.

Gov't Code Sec. 51.961

5. Jury Fees

The Clerk of a county court or statutory county court shall collect a $22 jury fee for each civil case in which a person requests a jury trial. The $22 fee includes the $5 jury fee required by Texas Rule of Civil Procedure 216. At least $5 of the fee must be paid not less than 30 days before the date set for trial; the remaining $17 must be paid no later than 10 days before trial is scheduled.

Gov't Code Sec. 51.604

TRCP 216

Universal Printing Co. v. Premier Victorian Homes, Inc., 73 S.W.3d 283 (Tex. App.—Houston [1st Dist. 2001],pet. denied)

6. Fee for Support of the Judiciary

The Clerk of a county court or constitutional court must collect a $42 fee on the filing of a civil suit to be used to court-related purposes for the support of the judiciary.

Local Gov't Code Sec. 133.154

7. Court Reporter Fee

The Clerk of a court that has an official court reporter must collect a court reporter service fee of $15 as a court cost in each civil case filed with the Clerk to maintain a court reporter who is available for assignment in the court. This fee is not to be collected in suits for delinquent taxes.

Gov't Code Sec. 51.601(a) and (e)

8. Expungement Suit Fee

The court Clerk shall charge the applicant for an expungement a fee of $30 when the offense sought to be expunged is (a) a violation of the Alcoholic Beverage Code by a minor; or (b) a violation of the law prohibiting tobacco possession by a minor.

Alc. Bev. Code Sec. 106.12

Health & Safety Code Sec. 161.255

9. Fees for Administration of Registry Funds

To compensate the county for expenses incurred in handling registry funds that have not earned interest, including funds in a special or separate account, the Clerk shall, at the time of withdrawal, deduct from the amount of the withdrawal a fee in an amount equal to five percent of the withdrawal but that may not exceed $50. Withdrawal of funds generated from a case arising under the Family Code is exempt from the fee deduction provided by this section.

Local Gov't. Code Sec. 117.055

To compensate the county for expenses incurred in handling registry funds that have been invested the Clerk shall, at the time of withdrawal, deduct an amount equal to 10 percent of total interest earned on the account.

Local Gov't. Code Sec. 117.054

> ***NOTE:*** *Interest earned on trust funds is owned by the owner of the principal. Sellers v. Harris Co., 483 S.W.2d 242 (Tex. 1972).*

10. Interpreter Fee

The Clerk shall collect a $3.00 fee as a court cost in each civil case in which an interpreter is used. The fee is to be deposited to the credit of the county's general fund.

Civ. Prac. & Rem. Code Sec. 21.051

11. Supplemental Court-Initiated Guardianship Fee

This $20.00 fee supports judicial guardianship proceedings, and can be used for compensation of guardian ad litems or attorney ad litems or to fund local guardianship programs. All fees are deposited in a special court-initiated guardianship fund. Fees are in addition to any other fees due, and are charged for all original and adverse probate actions described by Sec. 118.055 or 118.057 for which a fee is already due under Sec. 118.052.

Local Gov't Code 118.067

12. How Fees and Costs May be Paid

Payment of fines, fees, or court costs may be made by cash, check, credit card or electronic means, as authorized by the commissioners court. SB 1223 and HB 2717 (82nd Legislature) both amended Section 132.002(a). Although the bills use slightly different language, they authorize payments by electronic processing of checks and payments by electronic means. The Clerk may collect a processing fee for credit card and electronic transactions if such a fee has been authorized by the commissioners court. The commissioners court may also authorize acceptance of payment by these means without requiring collection of a processing fee.

Local Gov't Code Sec. 132.002
Local Gov't Code Sec. 132.002(a)

In addition to the processing fee of not more than five percent of the amount of the transaction, as prescribed in subsection (a), the Clerk may also collect a fee equal to the amount of the transaction fee charged to the county by the credit card vendor providing the services. The limitation set forth in subsection (a) does not apply to subsection (d).

Local Gov't Code Sec. 132.003

Fees, fines, and court costs may also be paid through the Internet. A reasonable handling fee may be charged for this service, only if the commissioners court determines that providing such service would not be feasible without the imposition of a charge. If a handling fee is assessed, it may be in an amount designed to recover actual costs of providing the service.

Local Gov't Code Sec. 132.007

D. FILING A CIVIL CASE

The initiation of a civil suit is always at the option of the plaintiff. There are no indictments or complaints in civil cases. The plaintiff merely files an original petition with the Clerk. The petition sets out exactly who the defendant(s) is and what actions have allegedly been performed by the defendant(s) which caused damage to the plaintiff.

TRCP 45

The attorneys for the parties prepare all documents in a civil case except for the Clerk's processes. The role of the Clerk is to file these documents, make them available to the court as requested, and inform the parties of important actions in the case by issuing appropriate processes.

TRCP 99

1. Initial Filing Procedures

A civil case may not be heard in county court unless it has been officially filed in the County Clerk's office. Offices which utilize an electronic case management system will find that some of the procedures discussed below are performed automatically or differ in some other respect. The ongoing implementation of e-filing also affects the procedures which will be utilized in a particular jurisdiction. The following initial procedures must be executed before proceedings can begin: *TRCP 22*

- The plaintiff's attorney will present the plaintiff's original petition to the Clerk. There should be one copy of the petition for the Clerk and one for each defendant named who is to receive notice of the suit.
- The original petition is file-marked by the Clerk showing the date and time of filing. Some Clerks also file-mark all copies. *TRCP 24*
- All fees for the Clerk and other county officials are collected and a receipt is issued.
- The petition is assigned a unique and sequential identifying number for filing purposes. This number is stamped or written on the petition and on all subsequent instruments as well. *TRCP 23*
- Next, the Clerk prepares the court docket sheet which is placed in the pending docket of the court assigned to hear the case (see "Dockets" - this chapter). *TRCP 26*
- The case is now entered into the civil file docket (also called Clerk's file docket, fee docket, or fee book (see "Dockets" - this chapter). *TRCP 25*
- Both plaintiff's name(s) and defendant's name(s) are indexed in the index to civil minutes (see "Index to the Civil Minutes" - this chapter).
- A permanent case folder should be prepared in which to store all instruments filed (see "Dockets" - this chapter).
- A citation is issued to each defendant as requested by the plaintiff. One copy of the original petition accompanies each citation (see "Issuance of Processes" - this chapter). The citations are either given to the sheriff for his execution and return or returned to the attorney, depending on the attorney's instructions. In accordance with Rule 103, Texas Rules of Civil Procedure, service may be made by certified mail by the County Clerk. *TRCP 103*
- The file number of the case is marked on the case folder, the original petition is put into the jacket, and the jacket is filed in numerical sequence with the other civil cases.

The Clerk's initial processing in the case is now completed. The case is now on record with the court, and the defendant has been notified that a suit against him is in progress.

Each party who has appeared or answered in a civil action must provide the Clerk with written notice of the party's name and current residence or business address. The notice must be provided at the time the initial proceeding is filed, or not later than the 7th day after the Clerk requests the information. If the address changes during the course of the action, the party must provide written notice to the Clerk. Any party who fails to comply may be assessed a fine of $50 by the trial court. *Civ. Prac. & Rem. Code Sec.30.015*

E. SERVICE OF PROCESS - MAIL - COSTS AND FEES

1. Assessment of Cost of Postage for Service of Process by Mail

Civ. Prac. & Rem. Code Sec. 17.025

If a public official is required or permitted by law to serve any legal process by mail, including process in suits for delinquent taxes, the official may collect advance payment for the actual cost of the postage required to serve or deliver the process, or the official may assess the expense of postage as costs. The authorized charges are in addition to the fees allowed by law for other services performed by the official.

Local Gov't. Code Sec. 118.011(c)

For such other duties prescribed or authorized by statute for which a fee is not prescribed by Subchapter B, Chapter 118, Local Government Code, reasonable fees shall be charged by the Clerk.

F. FOREIGN JUDGMENTS

1. Uniform Enforcement of Foreign Judgments Act (Enforcement of Judgments of Other States)

Civ. Prac. & Rem. Code Secs. 35.001-35.008

A foreign judgment is an order of a court of the United States or of another state which is entitled to full faith and credit in the courts of this state.

The Clerk shall file a foreign judgment, which has been **authenticated**, in the same manner as a judgment rendered by a court of competent jurisdiction of this state. It has the same effect and is subject to the same procedures, defenses, and proceedings as a judgment of a comparable court of this state.

Civ. Prac. & Rem. Code Sec. 35.005 Sec. 35.004(b) Sec.35.004(d)

Effective 5/17/11, SB 428 (82nd Legislature) repealed Section 35.005 of the Civil Practice and Remedies Code , amended Section 35.004(b), and added Section 35.004(d). The amendment to Subsection (b) requires the judgment creditor or the judgment creditor's attorney – rather than the Clerk – to mail notice of the filing of the foreign judgment to the judgment debtor and to file proof of mailing of the notice with the Clerk. The new Subsection (d) requires the Clerk to note the mailing in the docket upon receipt of proof of mailing pursuant to Subsection (b).

At the time a foreign judgment is filed, the judgment creditor or the judgment creditor's attorney shall file with the Clerk of the court an affidavit showing the name and last known post office address of the judgment debtor and the judgment creditor. The judgment creditor or the judgment creditor's attorney shall promptly mail a notice of the filing to the judgment debtor at the address provided for the judgment debtor under Section 35.004(a) and file proof of mailing of the notice with the Clerk of the court. On receipt of proof of mailing under Section 35.004(b), the Clerk of the court shall note the mailing in the docket. *See* Form IV-2.

Upon a showing by the judgment debtor that (1) an appeal is pending or that the time for taking an appeal has not expired; and (2) that the judgment debtor has furnished or will furnish the security for the satisfaction of the judgment required by the foreign jurisdiction, the court will stay enforcement of the foreign judgment.

The Clerk shall collect the same amount as required for filing suit and for other enforcement proceedings in this state from the person filing the foreign judgment.

2. Uniform Foreign Money-Judgment Recognition Act (Enforcement of Judgments of Other Countries)

Civ. Prac. & Rem. Code Secs. 36.001-36.008

A foreign country judgment means a judgment of a foreign country granting or denying a sum of money other than a judgment for: 1) taxes, a fine, or other penalty; or, 2) support in a matrimonial or family matter.

A foreign country judgment is enforceable in the same manner as a judgment of a sister state that is entitled to full faith and credit if the requirements described in Section 36.004, Civil Practice and Remedies Code are met.

A copy of a foreign country judgment **authenticated** in accordance with an act of Congress, a statute of this state, or a treaty or other international convention to which the United States is a party may be filed in the office of the Clerk of a court in the county of residence of the party against whom recognition is sought.

> ***NOTE:*** *Many foreign judgments are authenticated by apostilles issued under the 1961 Hague Convention. The United States became a subscriber to the treaty in 1981. An apostille certifies the authenticity of the signature, the capacity in which the person signing the document has acted, and identifies the seal/stamp which the document bears. Clerks with questions concerning the validity of an apostille from a foreign country may contact the U.S. State Department's Authentication Office in Washington D.C. at (202).*

The person filing the foreign country judgment shall file with the Clerk an affidavit showing the name and last known post office address of the judgment debtor and the judgment creditor. The Clerk shall promptly mail notice of the filing to the party against whom recognition is sought and shall note the mailing in the docket. The notice must include the name and post office address of the party seeking recognition and that party's attorney, if any, in this state. However, if the party seeking recognition files proof that he has mailed notice of the filing of the judgment to the judgment debtor, then the Clerk does not have to mail notice of the filing.

A court may refuse recognition of a foreign country judgment if the motions, affidavits, briefs and other evidence establish grounds for nonrecognition as specified in Section 36.005, Civil Practice and Remedies Code.

Upon a defendant satisfying the court either that an appeal is pending or that the defendant is entitled to and intends to appeal from the foreign country judgment, the court may stay the proceedings.

> ***NOTE:*** *It is a good practice for Clerks to list on an abstract of judgment for a foreign judgment the foreign court where the judgment came from and the date it was filed in the Texas court.*

G. SUBSEQUENT FILING PROCEDURES

Any number of additional instruments may be submitted to the Clerk for filing as the case moves toward disposition. Each of these instruments must be filed by the Clerk for the court's consideration. Some common instruments filed in civil cases are the following:

- Citations (of various types)
- Defendant's Answers
- Amended Petitions
- Amended Answers
- Injunctions
- Interventions
- Motions
- Exhibits
- Writs
- Orders
- Judgments
- Subpoenas
- Affidavits
- Verdicts
- Dismissals
- Medical Records

The citations, writs, and subpoenas mentioned above are issued by the Clerk and are filed after the sheriff's service and return. All other documents are prepared by the attorneys and filed directly with the Clerk.

NOTE: *The $40.00 fee for filing an original action under Section 118.053 of the Local Government Code is for all clerical duties, including the issuance of citations, notices, and subpoenas, performed in connection with a civil action filed in a county court. The fee is charged of the plaintiff or appellant and is due at the time the cause is filed. Only one fee is due in each action. The $40.00 fee, however, does not apply to certain other actions, including the issuance of abstracts of judgment and the issuance and recording of returns for writs of execution, for which another fee is prescribed by Sections 118.0545, 118.052(2) and 118.052(3), Local Government Code.*

Local Gov't. Code
Sec. 118.053
Sec. 118.0545
Sec. 118.052

Similarly, the $30.00 fee for filing an action other than an original action under Section 118.054 of the Local Government Code is for all clerical duties, including the issuance of citations, notices and subpoenas, performed in connection with an interpleading, cross action, or action other than the original action filed in county court. The fee is charged of the party initiating the action and is due at the time the action is initiated. The $30.00 fee, however, does not apply to certain other actions for which another fee is prescribed by Section 118.052(2) or 118.052(3), Local Government Code.

Local Gov't Code
Sec. 118.054
Sec. 118.052

Proper filing of these records should include the following procedures as the instruments are presented to the Clerk:

- File-mark the instrument to show the date and time received. *TRCP 24*
- Collect the appropriate fee and issue a receipt.
- Enter the instrument's type, date of receipt, and fee collected into the civil file docket. *TRCP 25*
- If the instrument is an order or judgment, record it in the civil minutes, and index it in the court minutes under the defendant's name (direct) and plaintiff's name (reverse). Also, make an entry in the civil file docket and judge's docket sheet.
- Place the instrument in the file folder and note the type of instrument and date filed on the outside of the folder.

H. SPECIAL FILING PROCEDURES

Certain types of cases and instruments require special processing at the time of filing. The following paragraphs explain some of these procedures.

1. Answers and Amended Petitions

The defendant's original answer is similar to the original petition in that it is the defendant's first explanation to the court of his side of the case. The defendant's answer may include several matters, such as a special appearance, motion to transfer venue and a cross action. Quite often, a judge will ask to be notified at the time an answer is filed so that the allegations of both parties may be examined. The Clerk should examine the answer closely to determine whether the defendant is requesting a citation or other process to be issued.

Amended petitions (and also amended answers) may be filed several times in the course of a case. This occurs as new facts or parties to the case arise. Service by the Clerk is usually requested so the instrument should be examined carefully.

2. Cross Actions and Interventions

A cross action is heard as a part of the original suit and is not given a new case number. Some process will usually be requested of the Clerk in such cases. *TRCP 97*

An intervention is the entry into the case by a third party, or intervenor. The intervenor will file a petition with the Clerk and will request some sort of service. Again, the intervention is a part of the original suit. *TRCP 60*

In either case, the Clerk is entitled to a $30 filing fee and the full cost of whatever service is requested. *Local Gov't Code Sec. 118.054*

3. Appeal from Department of Public Safety Ruling

Under the provisions of Section 521.308, Transportation Code, a person may appeal an order of suspension, probated suspension, revocation, or cancellation of his or her driver's license entered by the Department of Public Safety. The proper filing of a petition of appeal will abate such an order until the trial has been completed and a final judgment has been entered. A citation is usually not issued, but the appellant must send a certified copy of the petition by certified mail to the Department of Public Safety. *Transp. Code Sec. 521.308*

4. Bond Forfeitures

Bond forfeiture suits are civil suits that stem from criminal cases. This suit seeks to recover the amount of the bond from the sureties when a criminal defendant fails to appear in court as promised. Bond forfeitures are filed as any other civil case except that the judgment nisi accompanies the original petition. A copy of the judgment nisi and forfeited bond, and any power of attorney attached to the forfeited bond, are attached to the citation issued to each surety. It is not necessary to give notice to the defendant unless he has furnished his address on the bond, in which event he shall be notified by mail to the address shown on the bond. For a more detailed discussion, please see Chapter III.K. *CCP Art. 22.01*

5. Motion to Transfer Venue

A motion to transfer venue is a request for change of venue in a case from one court to another. Clerical procedures in such a case (providing that the judge grants the plea) are as *TRCP 89*

follows:

- The judge issues an order for change of venue.
- The Clerk prepares (in duplicate) a certificate (or letter) of order which is a list of the titles of all instruments filed for record in the court of first jurisdiction.
- The Clerk makes a certified copy of all orders granted in the court having first jurisdiction.
- Copies of these orders plus the original of all other instruments, a bill of costs, and both copies of the certificate of order are sent to the Clerk of the court of new jurisdiction.
- The Clerk of the new court of jurisdiction should sign and return a copy of the certificate of order which is filed in the case folder. Additionally, the Clerk of the new jurisdiction should mail notification to the plaintiff or the plaintiff's attorney that transfer of the case has been completed and that the filing fee in the proper court is due and payable within thirty days after mailing of the notification.

6. Depositions and Exhibits

In the absence of local rules to the contrary, Clerks are not required to file depositions. *TRCP 191.4*

The deposition officer is required to file with the court in which the case is pending a copy of the court reporter's deposition certificate described in Rule 203.2, Texas Rules of Civil Procedure. The Clerk of the court where the certification is filed must tax as costs the charges for preparing the original deposition transcript and making and attaching copies of all exhibits to the original deposition. *TRCP 203.2*

7. Multidistrict Litigation

The judicial panel on multidistrict litigation (MDL Panel) may transfer civil actions involving one or more common questions of fact that are pending in the same or different county courts or district courts for consolidated pretrial proceedings (such as summary judgment) but not for trial on the merits. Such a transfer may be (1) in response to a motion by a party in a case; (2) in response to a request by a trial court or by the presiding judge of an administrative judicial region; or (3) on the MDL Panel's own initiative. Any motions, requests, responses to the motions or requests, and replies to the responses are to be filed with the MDL Panel Clerk. The MDL Panel Clerk is the Clerk of the Supreme Court of Texas. *Gov't Code Sec. 74.162*

Rules of Jud. Adm. 13.3(a-c) 13.3(f) 13.2

County Clerks become involved in this process in that any party filing a motion for a case to be transferred is required to file a notice in the trial court where the motion for transfer has been filed. When a request for a transfer has been filed with the MDL Clerk by a judge, the MDL Clerk must cause a notice of this event to be filed with the trial court. *Rules of Jud. Adm. 13.3(i)*

If the MDL Panel decides to transfer a case, the MDL Panel will file a notice of transfer with both the trial court and the pretrial court (*i.e.*, the court that will hear the consolidated pretrial proceedings). After notice of transfer is filed in the trial court, the trial court is generally to take no further action in the transferred case. *Rules of Jud. Adm. 13.5(a) 13.5(b)*

If the trial court and the pretrial court are in the same county, then the trial court must transfer the case file to the pretrial court in accordance with the local rules governing the courts of that county. If the trial court and the pretrial court are not in the same county, then the trial court Clerk must transmit the case file to the pretrial court Clerk. *Rules of Jud. Adm. 13.5(c)*

At the conclusion of the pretrial court's work, cases may or may not be remanded to the trial court. If the pretrial court has rendered a final and appealable judgment (such as a summary judgment) in a case, the case will not be remanded to the trial court. On the other hand, the pretrial court may order remand of one or more cases, or separable triable portions of cases, when pretrial proceedings have been completed to such a degree that the purposes of the transfer have been fulfilled or no longer apply. When a case is remanded to the trial court, the Clerk of the pretrial court will send the case file to the trial court. The parties may file in the remanded case copies of any pleadings or orders from the pretrial court's master file. The Clerk of the trial court must reopen the trial court file under the cause number of the trial court without assessing any new filing fees.

Rules of Jud. Adm. 13.7(c)

I. ISSUANCE OF PROCESSES

The County Clerk, as an officer of the court, issues all processes necessary for proper disposition of each civil case. Most processes will be requested or prepared by the parties to the suit and, in some cases, approval of the judge is necessary. All processes must carry the date, the signature of the Clerk and the seal of the court to be official.

Civ. Prac. & Rem. Code Sec. 17.027

TRCP 15

1. Citation

A citation is an official notice of legal action. It is issued to defendants in civil lawsuits (including third-party defendants and defendants sued pursuant to counterclaims and cross-claims) notifying them that a case has been filed. The citation does not usually require personal appearance but does demand a written answer filed "on or before the Monday next after the expiration of twenty days after the date of service" of the citation.

TRCP 15
TRCP 99
TRCP 38
TRCP 97

Procedurally, the citation is issued in the following manner:

- On a blank citation form, enter the defendant's name, court of jurisdiction, date original petition was filed, case file number, style of the case, name and address of the attorney for the plaintiff (otherwise the address of the plaintiff), address of the Clerk, and the date of issuance of citation. The defendant's name is obtained from the petition. The citation must:
  - be styled "The State of Texas,"
  - be signed by the Clerk under seal of court,
  - contain the name and location of the court,
  - show the date of filing of the petition,
  - show the date of issuance of citation,
  - show the file number,
  - show the names of the parties,
  - be directed to the defendant,
  - show the name and address of attorney for plaintiff, otherwise the address of plaintiff,
  - contain the time within which these rules require the defendant to file a written answer with the Clerk who issued citation,
  - contain the address of the Clerk, and
  - notify the defendant that in case of failure of defendant to file and answer, judgment by default may be rendered for the relief demanded in the petition.

TRCP 99(b)

- The citation must include the following notice to the defendant:

TRCP 99(c)

"You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the Clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you."

- On the outside of the citation, enter the case file number, court of jurisdiction, and style of the case.
- A copy of the original petition, answer, or intervention is attached to the citation.
- Affix the seal of the court and sign the citation both inside and out.
- A separate citation is issued to each defendant named in the petition.
- The citations are given to the sheriff or a constable or other person authorized by law for service and return of the original.
- Both the issuance of the citation and its return are noted in the civil file docket and on the case jacket. After the return, the citation is sorted and filed in the case jacket.

2. Return of Service

TRCP 107

The officer or authorized person executing the citation must complete a return of service. The return may, but need not, be endorsed on or attached to the citation.

The return, together with any documents to which it is attached, must include the following information:

(1) the cause number and case name;
(2) the court in which the case is filed;
(3) a description of what was served;
(4) the date and time the process was received for service;
(5) the person or entity served;
(6) the address served;
(7) the date of service or attempted service;
(8) the manner of delivery of service or attempted service;
(9) the name of the person who served or attempted to serve the process;
(10) if the person named in (9) is a process server certified under order of the Supreme Court, his or her identification number and the expiration date of his or her certification; and
(11) any other information required by rule or law.

When the citation was served by registered or certified mail as authorized by Rule 106, the return by the officer or authorized person must also contain the return receipt with the addressee's signature.

3. Citations for Delinquent Taxes

TRCP 117a

Citations for tax suits are issued on a different form than standard citations. The form must list the taxing units initiating the suits, the amount of taxes due (by year), and a description of the property in question. The citation must also show the names of the taxing

units which assess and collect taxes on said property not made parties to such suit. All other procedures are the same as for regular citations. A copy of the petition is not required to be attached to the citation or served. (See sections 1-6 of Rule 117a)

4. Citation by Publication

TRCP 109
TRCP 114
TRCP 116

When the defendant in a case cannot be located for personal service, a citation by publication may be substituted. The plaintiff should submit an affidavit swearing that the defendant's whereabouts are unknown and that the plaintiff has attempted to obtain personal service but has been unable to do so. The citation should contain the names of the parties, a brief statement of the nature of the suit, a description of any property involved, and the interest of the named or unknown defendant(s). Several defendants can be named in one citation. The citation should command the defendant(s) to appear in court before 10:00 a.m. of the first Monday after the expiration of 42 days from the date of issuance. This is in contrast to the 20 days appearance period for a regular citation. The citation by publication is served by the sheriff or by the Clerk by having it published in the newspaper once a week for 4 consecutive weeks.

TRCP 117

The return of the officer executing a citation by publication shall show how and when the citation was executed, specifying the dates of such publication, be signed by him officially and shall be accompanied by a printed copy of such publication.

5. Subpoenas

TRCP 176.1

Civil subpoenas must be issued in duplicate with only one party's name on each subpoena. It is suggested that a local rule of court be adopted by the court(s) in the Clerk's county which requires that a sworn, written application for the issuance of a civil subpoena be filed with the Clerk, as is required for a criminal subpoena.

TRCP 176.3
TRCP 199.2
TRCP 200.2

Note that the subpoena range in a civil case is 150 miles, measured from the county of prosecution to the witness's residence or place of service. Depositions and requests for production are exempted from this requirement. However, they must be conducted in the county in which the witness resides, is employed, or regularly conducts business in person. The witness' appearance may be compelled under Rules of Civil Procedure 199.3 and 200.2.

a. Witness Fees

Civ. Prac. & Rem. Code
Sec. 22.001

A witness, other than a witness summoned by a state agency, is entitled to ten dollars for each day the witness attends court. This fee includes the entitlement for travel. The witness is not entitled to any reimbursement for mileage traveled.

The party who summons the witness must pay that witness's fee for one day at the time the subpoena is served on the witness.

The witness fee must be taxed in the bill of costs as other costs.

b. Fees for Witnesses Summoned by State Agency

Civ. Prac. & Rem. Code
Sec. 22.003

A witness, summoned by a state agency is entitled to receive witness fees from the agency as detailed in Section 22.003(b) of the Civil Practice and Remedies Code.

After receiving an affidavit concerning these witness fees, the Clerk shall issue a certificate showing the fees incurred. The witness fees are to be taxed in the bill of costs as other costs.

6. Bill of Costs

TRCP 89

Since civil fees are prepaid, a bill of costs is not normally needed. In two cases, however, the instrument may be required. First, when the final judgment states that the defendant shall pay all court costs, the Clerk, if requested, may submit a bill of costs to the defendant. When the defendant pays the costs, the Clerk will refund the plaintiff's deposit. Second, on motion to transfer venue, the Clerk prepares a bill of costs showing that costs have been collected in the original court.

7. Writ of Sequestration

TRCP 696
TRCP 698
TRCP 699
TRCP 700

When the plaintiff files a suit on note and sequestration, the plaintiff also files an affidavit describing the property sued for and the plaintiff's interest in the property. The affidavit asks the court to grant a writ of sequestration which authorizes the sheriff to attach the property pending judgment in the suit. No writ shall be issued except upon written order of the court after a hearing, which may be ex parte. The Clerk will issue the writ and attach it to the citation and copy of the original petition that goes to the defendant. The writ must list the exact property being sued for. All instruments are given to the sheriff for his return. The plaintiff must post a bond payable to the defendant with the Clerk in the amount fixed by court order. Clerical errors may be amended.

8. Notice of Default Judgment

TRCP 239
TRCP 239a
TRCP 107

If the defendant does not answer the plaintiff's petition or contest the suit, then a default judgment may be rendered against the defendant after the citation with proof of service has been on file with the Clerk for ten days, not including the date of filing and the date of judgment. The Clerk must mail a notice to the defendant at his last known address advising him of this judgment. The last known address of the defendant must be certified in writing by the attorney for the plaintiff.

TRCP 239a

The notice contains the case number, case style, court in which the case is pending, names of the parties, and the date the judgment was signed. The Clerk must note on the docket sheet the date of mailing or file a copy of the notice mailed in the file. Like notice is to be mailed to all other parties upon the signing of a final judgment or other appealable order. For the Clerk's own protection, the Clerk should have proof of mailing.

J. SPECIAL TYPES OF SERVICE

TRCP 15

The processes issued by the Clerk are commonly delivered by the sheriff or constable but this is not always the case.

1. Service by Registered or Certified Mail

TRCP 103
TRCP 106(a)
TRCP 107

Unless the citation or an order of the court otherwise directs, the citation may be served by the Clerk, sheriff or constable by mailing to the defendant by registered or certified mail, return receipt requested, a true copy of the citation with a copy of the petition attached thereto. When service is by registered or certified mail, the Clerk’s or officer’s return must also contain the return receipt with the addressee’s signature.

2. Service by Authorized Persons other than Sheriffs or Constables

TRCP 103

Courts are permitted to authorize persons (who are not less than 18 years of age) other than sheriffs or constables to serve citations as well as other processes. The Supreme Court

also certifies process servers who may effect service instead of a sheriff or constable. No person who is a party to or interested in the outcome of a suit shall serve any process. The order authorizing a person to serve processes may be made without written motion and no fee shall be imposed for issuance of such an order.

3. Substitute Service

TRCP 106

On order of the court, a process can be delivered to any person, over the age of 16, found at the normal living place of the party to be sued or at the usual place of business of the party to be served. This action is authorized by the judge when the party to be sued cannot be found for regular service. A copy of the court's order is attached to the process and the process is given to the sheriff for his service and return.

4. Serving the Secretary of State

Civ. Prac. & Rem. Code
Sec. 17.026
Secs. 17.041-17.045

When the need arises to serve process on a business concern having no registered representative in the State of Texas, the Secretary of State is served instead. The original and two (2) copies of the process may be forwarded to the sheriff of Travis County who in turn gives them to the Secretary of State for final service. Service may also be made on the Secretary of State by the Clerk of the court or by the party or the representative of the party.

The Secretary of State's address is:

Office of the Secretary of State
Citations Unit
P.O. Box 12079
Austin, Texas 78711-2079

The telephone number is 512/463-5560. Information is also available at www.sos.state.tx.us/statdoc/index.shtml (select "Service of Process").

Gov't Code
Sec.405.031(a)(4)

The secretary of state charges a $40.00 fee for maintaining a record of service of any process, notice or demand authorized to be made upon the secretary of state as agent, and for forwarding the process.

Civ. Prac. & Rem. Code
Sec. 17.045
1 TAC '71.21

When there is substituted service on the Secretary of State, two copies of the process are delivered to the Secretary of State. The plaintiff must provide a correct home, home office or principal place of business address for the defendant.

Whitney v. L & L Realty Corp., 500 SW 2d 94 (1973)

The Texas Supreme Court has held that in order for a valid default judgment to be entered against a defendant, there must be a showing in the record that the Secretary of State served the defendant. The Supreme Court of Texas also held that service on an employee of the Secretary of State is sufficient to effect service on the Secretary of State.

Capitol Brick, Inc. v. Fleming Mfg. Co., 722 S.W.2d 399 (1986)

Bonewitz v. Bonewitz, 726 S.W.2d 227 (1987)

Gov't. Code Sec. 405.031(a)

The Third Court of Appeals expanded on this and held that the Secretary of State is required to forward the service to the named defendant, but that time begins running on the date the Secretary of State is served, not the date the defendant actually receives the service. Upon request, the Secretary of State, for a fee of $15.00, will return a certificate of service stating that the process was forwarded to the defendant.

5. Out-of-State Service

TRCP 106
TRCP 108

The form of notice to a defendant who is absent from the state, or is a nonresident of the state, is the same as for citation to a resident defendant, and may be served by any disinterested person competent to serve a resident defendant. The return of service should be endorsed on or attached to the original notice and shall be in the same form as the return of service for a resident defendant. It should be signed and sworn to by the party making such service before some officer authorized by laws of this state to take affidavits.

Civ. Prac. & Rem. Code Sec. 17.062

To serve nonresident motor vehicle operators, the Chairman of the Texas Transportation Commission may be served. The original and two (2) copies of the petition and citation are forwarded to the sheriff of Travis County who delivers the process to the State Department of Highways and Public Transportation. The department, upon payment of a $25 fee, will then make the return.

The address for service is:

Texas Transportation Commission, Chair
125 E. 11th Street
Austin, Texas 78701-2483

Additional information is available at: www.txdot.gov or by phone at 512/305-9509.

6. Out-of-County Service

TRCP Rule 103

Service by sheriffs and constables is no longer restricted to service in their county; therefore, the sheriff or constable may serve process in a neighboring county or elsewhere that is economically feasible. Texas Rule of Civil Procedure 103 states that citations may be served "anywhere." Process may still be mailed to a sheriff or constable in the county in which service is required.

K. DOCKETS

TRCP 25
TRCP 26

The Clerk is required by statute to maintain two dockets for each civil case filed: the file docket and the court docket. Most Clerks find it convenient to duplicate most of the file docket on the file folder so that, in essence, three dockets are maintained for each case. Proper maintenance of each docket will facilitate the record keeping for each case.

1. Civil File Docket

TRCP 25

This book is referred to as the Clerk's file docket and is also called the fee docket or file docket. It is the Clerk's master reference to all instruments filed for record in the individual case. The fee docket book contains a "direct" and "reverse" index in the front of the volume. The Clerk must index all entries made in the fee docket book.

A separate docket sheet is created for each case at the time a suit is filed. Initial docket information should include:

- The file number of the case
- Date of filing
- The court of jurisdiction (if there is more than one county court)
- The style of the case (which should read "Plaintiff's name v. Defendant's name")
- The names of the attorneys of record
- The nature of the suit

As the case progresses, the Clerk must keep a record all instruments filed for record. These would include:

- All processes issued by the Clerk and date of issuance
- All returns of processes and date of return
- All instruments filed for record and date of filing
- All orders and judgments and dates rendered

While not required by statute, most Clerks find it convenient to incorporate into the civil file docket a listing of all fees charged and the disbursement of such fees to the various county offices. Other Clerks prefer to maintain a separate fee record for each case in another book.

2. Court Docket

TRCP 26

The court docket (also known as the judge's docket) is also prepared at the time a case is filed. The court docket officially places the case in the jurisdiction of the court that is to hear the case. Some judges prefer to keep their own docket, even though the law provides that the Clerk shall keep the docket.

This docket provides the judge with all the basic information of the case and should be in the judge's possession whenever proceedings of the case are being heard. The court docket becomes the official record of all pleas, motions, and rulings in the case. The judge should note all these actions on the docket as they occur.

Information recorded on the court docket should include the following:

- The file number of the case
- Date of filing
- Court of jurisdiction
- The style of the case
- The names of the attorneys of record
- The nature of the suit
- All pleas, motions, and rulings in the case
- The volume and page number of the permanent record of all rulings, orders, and judgments
- A notation of the payment of the jury fee, including the date and by whom paid

3. Case File Folder

The case file folder serves as the permanent depository for all instruments filed in a

case. The folders are filed in numerical sequence according to file number.

The folder is normally made available to the judge and attorneys each time some proceeding is being heard in court. For their convenience, the Clerk should note all processes and instruments filed for record on the outside of the folder or docket sheet. The folder can then be used as a file docket in the courtroom. It is a good practice for the Clerk to have a "check-out" sheet or on computer. For any file that is taken from the office, the file must be signed "out" and "in" by the person taking the file from the office. The sheet should show who has the file, when it was checked out, and when it was checked in.

At the termination of each case, the Clerk should examine the contents of the case folder to ensure that all instruments that have been filed for record are present. The Clerk should also check to be certain that all orders and judgments have been recorded, scanned and indexed.

L. INDEX TO THE CIVIL MINUTES

Local Gov't. Code Sec. 192.006

TRCP 25
TRCP 26
TRCP 27

There should be an entry in the index to civil minutes for every party to a civil case when the judgment is filed and made a part of the civil minutes. Separate index books are maintained for the names of plaintiffs and the names of defendants or the book may have a "direct" and "reverse" section in the same book. In cases where there is no defendant (ex parte suits), the case is indexed in the plaintiff's book or, if the index is contained within one book, section, or data indexed on computer.

Each index is created at the time of recording the minutes (judgments and orders). The sequence of the index is alphabetical by the party's last name. The index should also cross reference other parties to the suit. The county has more than one court that hears civil cases, a separate set of indexes should be kept for the minutes of each court.

The index for each party in the suit should contain the following information

- The name of the party (whether an individual or a business firm). The name should be exactly as stated on the original petition. The names of additional parties to the suit should be indexed as they enter the case.
- The name of the opposing party
- The date of filing
- The nature of the case
- The volume and page number, or other location information if records are microfilmed or stored electronically, of all minutes of the case.

M. RECORDING OF CIVIL MINUTES

The minutes of civil cases include all motions, orders, and judgments signed by the judge. The attorneys in the case prepare all such documents for the judge's signature, and the judge in turn forwards the documents to the Clerk for recording.

The Clerk may wish to record other instruments in the case minutes as well. The Clerk should consult with the judge in determining exactly what documents should be included in the civil minutes.

The recording process for civil minutes is similar to that for all other instruments recorded.

- The Clerk should examine the instrument to see that it is complete and the judge's signature is present.
- The volume and page number is written or stamped on each page of the instrument.
- The instrument is transcribed or copied.
- The copy is inserted into the current volume of the minutes.
- The volume and page number of the first page of the minutes is recorded in the index to civil minutes (for all parties), the court docket, and on the outside of the case folder.
- The original instrument is filed in the case folder. This is when the index to civil minutes is used.

NOTE: Scanning Civil Documents into Minutes or the Case History

Once a document is received, the Clerk file stamps the document and scans into the case history.

When a civil judgment is received, the Clerk sends the judgment to the Judge for signature. (the Clerk checks the file out to the Judge's office for tracking purposes). After it is signed and returned back to the Clerk, he/she enters the Judgment information which closes out the disposition of the file and then scans the Judgment into that Event so it will appear in the case history.

After data entry of all documents, they should be scanned into the case history.

N. VEXATIOUS LITIGANTS

The original vexatious litigant statute for Texas was created by the Texas Legislature in 1997 with the passage of HB 3087. The bill enacted Chapter 11 of the Civil Practice and Remedies Code. The original statute used the California statute as a model. The Texas statute was amended in 2011 during the first called session of the 82nd Legislature as part of HB 79. The statute was more substantially amended in 2013 during the regular session of the 83rd Legislature by Senate Bill 1630.

The statute is divided into Subchapters A, B, and C. Subchapter A contains Section 11.001, Definitions, and Section 11.002, Applicability. Section 11.002 was added as part of the 2013 amendments and provides that **Chapter 11 does not apply to municipal courts and Chapter 11 does not apply to an attorney licensed to practice law in this state unless the attorney proceeds pro se.** Subchapter B is comprised of Section 11.061 – 11.057. Section 11.051, Motion For Order Determining Plaintiff A Vexatious Litigant And Requesting Security, provides that a defendant who wishes to move the court for an order that determines that the plaintiff is a vexatious litigant and requires the plaintiff to furnish security **must file the motion on or before the 90th day after the date the defendant files the original answer or makes a special appearance.** Note that if there is more than one defendant, defendants other than the one who files the motion are not automatically included. Section 11.054, which is discussed in greater detail below, provides the mandatory criteria for finding a plaintiff to be

a vexatious litigant. Section 11.052, Stay Of Proceedings On Filing Of Motion, provides that if a motion under Section 11.051 is filed on or after the date the trial starts, the litigation is stayed and the **moving defendant** is not required to plead for a period the court determines. If the motion is filed before the trial starts, the litigation is stayed and the **moving defendant** is not required to plead: (if the motion is denied) before the 10th day after the date the motion is denied; or (if the motion is granted) before the 10th day after the date the **moving defendant** receives written notice that the plaintiff has furnished the required security. Section 11.053, Hearing, provides that the court **shall, after notice to all parties,** conduct a hearing to determine whether to grant the motion. The court may consider **any evidence material to the ground of the motion**, including written or oral evidence and evidence presented by witnesses or by affidavit.

In order for there to be a finding by a court that a plaintiff is a vexatious litigant, certain criteria must be met:

- **The moving defendant must always first show facts which establish that there is not a reasonable probability that the plaintiff will prevail in the litigation against the defendant; then, the moving defendant must show facts which support a finding by the court that one or more of the three "options" described below exists.**
- "Option One" – That the plaintiff, in the seven-year period immediately preceding the date the moving defendant makes the motion under Section 11.051, has commenced, prosecuted, or maintained at least five litigations as a pro se litigant other than in a small claims court and each of these litigations has been either finally determined adversely to the plaintiff or permitted to remain pending at least two years without having been brought to trial or hearing or has been determined by a trial or appellate court to be frivolous or groundless under state or federal laws or rules of procedure.
- "Option Two" – That after a litigation has been finally determined against the plaintiff, the plaintiff repeatedly relitigates or attempts to relitigate, pro se, either the validity of the determination against the same defendant as to whom the litigation was finally determined or the cause of action, claim, controversy, or any of the issues of fact or law determined or concluded by the final determination against the same defendant as to whom the litigation was finally determined.
- "Option Three" – That the plaintiff has previously been declared to be a vexatious litigant by a state or federal court in an action or proceeding based on the same or substantially similar facts, transition, or occurrence.
- Section 11.055 provides that if the court, after hearing the evidence on the motion, determines that the plaintiff is a vexatious litigant, the court **shall** order the plaintiff to furnish security **for the benefit of the moving defendant**. The court shall provide that the security is an undertaking by the plaintiff **to assure payment to the moving defendant of the moving defendant's reasonable expenses** incurred in or in connection with a litigation commenced, caused to be commenced, maintained, or caused to be maintained by the plaintiff, including costs and attorney's fees.
- Section 11.056, Dismissal For Failure To Furnish Security, provides that the court **shall** dismiss a litigation **as to a moving defendant** if a plaintiff ordered to furnish security does not furnish the security within the time set by the order.

- Section 11.057, Dismissal On The Merits, provides that if the litigation is dismissed on its merits, the **moving defendant** has recourse to the security furnished by the plaintiff in an amount determined by the court.

Subchapter C, Prohibiting Filing Of New Litigation, is comprised of Sections 11.101 – 11.104. Section 11.101 provides that on the motion of any party or on the court's own motion, the court may, **after notice and hearing as provided by Subchapter B and if the court makes a finding that the person is a vexatious litigant**, enter an order prohibiting the person from filing pro se a new litigation in a court to which the order applies under this section without permission to file the litigation from the appropriate local administrative judge described by Section 11.102(a). A person who disobeys an order under Subsection (a) is subject to contempt of court. **A litigant may appeal from a prefiling order entered under Subsection (a) designating the person a vexatious litigant.**

Note that Section 11.101(d) provides that a prefiling order entered under Subsection (a) by a justice or constitutional county court applies only to the court that entered the order. Also note that Section 11.101(e) provides that a prefiling order entered under Subsection (a) by a district or statutory county court applies to each court in this state.

Section 11.102, Permission By Local Administrative Judge, includes a requirement that a vexatious litigant subject to a prefiling order under Section 11.101 who files a request seeking permission to file a litigation **shall** provide a copy of the request to all defendants named in the proposed litigation. If a vexatious litigant subject to a prefiling order is seeking permission to file in a justice or constitutional county court, the vexatious litigant must obtain permission to file from the local administrative district judge of the county in which the vexatious litigant intends to file. If a vexatious litigant subject to a prefiling order is seeking permission to file in a court other than a justice or constitutional county court, the vexatious litigant must obtain permission to file from the local administrative judge of the type of court in which the vexatious litigant intends to file. The appropriate local administrative judge described by Subsection (a) may make a determination on the request with or without a hearing. If the judge determines that a hearing is necessary, the judge may require that the vexatious litigant filing a request under Subsection (b) provide notice of the hearing to all defendants named in the proposed litigation. Subsection (d) provides that the appropriate local administrative judge described by Subsection (a) may grant permission to a vexatious litigant subject to a prefiling order under Section 11.101 to file a litigation only if it appears to the judge that the litigation has merit and has not been filed for the purposes or harassment or delay. Subsection (e) provides that the appropriate local administrative judge described by Subsection (a) may condition permission to file a litigation on the furnishing of security for the benefit of the defendant as provided in Subchapter B. Subsection (f) provides that a decision of the appropriate local administrative judge described by Subsection (a) denying a vexatious litigant permission to file a litigation under Subsection (d) or conditioning permission to file a litigation on the furnishing of security under Subsection (e) is **not grounds for appeal**, except that the litigant may apply for a writ of mandamus with the court of appeals not later than the 30th day after the date of the decision. The denial of a writ of mandamus by the court of appeals is **not grounds for appeal to the supreme court or court of criminal appeals.**

The 2013 amendments to Section 11.103 include some changes to insert conforming terms and references in Subsections (a), (c), and (d) and repealed Subsection (b). The most significant change to this section concerns mistaken filing by a clerk of litigation submitted by

a vexatious litigant who is subject to a prefiling order. New Section 11.1035 now contains the provisions for mistaken filing. This section provides that if the clerk mistakenly files litigation presented, pro se, by a vexatious litigant subject to a prefiling order under Section 11.101 without an order from the appropriate local administrative judge described by Section 11.102(a), any party may file with the clerk and serve on the plaintiff and the other parties to the litigation a notice stating that the plaintiff is a vexatious litigant required to obtain permission under Section 11.102 to file litigation. **No later than the next business day after the date the clerk receives notice that a vexatious litigant subject to a prefiling order under Section 11.101 has filed, pro se, litigation without obtaining an order from the appropriate local administrative judge described by Section 11.102(a), the clerk shall notify the court that the litigation was mistakenly filed.** On receiving notice from the clerk, the court shall immediately stay the litigation and shall dismiss the litigation unless the plaintiff, not later than the 10th day after the date the notice is filed, obtains an order from the appropriate local administrative judge described by Section 11.102(a) permitting the filing of the litigation. **An order dismissing litigation that was mistakenly filed by a clerk may not be appealed.**

Section 11.104 was amended in 2013 by adding Subsection (c). This new subsection provides clearly that the Office of Court Administration may not remove the name of a vexatious litigant subject to a prefiling order under Section 11.101 from the agency's Internet website unless the office receives a written order from the court that entered the prefiling order or from an appellate court. An order of removal affects only a prefiling order entered under Section 11.101 by the same court. A court of appeal decision reversing a prefiling order entered under Section 11.101 affects only the validity of an order entered by the reversing court.

The Office of Court Administration maintains the list of vexatious litigants subject to prefiling orders online at: http://http://www.txcourts.gov/judicial-data/vexatious-litigants.aspx.

Clerks may email a copy of a prefiling order to OCA at JudInfo@txcourts.gov. Clerks may fax a prefiling order to OCA at (512) 936-2423. Clerks may mail a prefiling order to OCA at Office of Court Administration, Attn: Judicial Information, P. O. Box 12066, Austin, Texas 78711-2066.

Questions concerning the list should be submitted to: Judy Speer, Assistant General Counsel, Office of Court Administration at Judy.Speer@txcourts.gov or (512) 936-7061.

Civ. Prac. & Rem. Code Sec. 11.104

O. APPEALS OF CIVIL CASES

The courts of appeals have jurisdiction over appeals in civil cases from county courts in which the judgment or amount in controversy exceeds $250. A party may appeal from a final county court judgment to the relevant court of appeals.

Civ. Prac. & Rem. Code Sec. 51.012

There are 14 intermediate courts of appeals in Texas. Each court of appeals has jurisdiction over a particular geographical district, consisting of certain counties.

1. Appeals Procedures

The Clerk, the judge, the parties, and their attorneys all have roles in the process of appeals. The primary responsibility for preparing the appeal, however, falls upon the Clerk.

TRCP 306a

TRAP 26.1

There are specific rules relating to both the time periods for perfecting appeals and the procedures for doing so. The Clerk should become thoroughly familiar with these procedures so that the appeals process is not interrupted. In determining the period within which the various steps of an appeal must be taken, the date when the trial judge signs the order or judgment shall determine the beginning of the time periods prescribed for filing an appeal.

2. Timetables for Civil Cases

a. Ordinary Appeal WITHOUT Motion for New Trial or Request for Findings of Fact and Conclusions of Law

Days	Event	
0	Judgment Signed	*TRCP 306a*
30	File written notice of appeal	*TRAP 26.1*
60	File Clerk's record and reporter's record with court of appeals	*TRAP 35.1*

b. Ordinary Appeal WITH Motion for New Trial, Motion to Modify Judgment, Motion to Reinstate under Rule of Civil Procedure 165a, or Request for Findings of Fact and Conclusions of Law

Days	Event	
0	Judgment Signed	*TRCP 306a*
20	Request for Findings of Fact and Conclusions of Law	*TRCP 296*
30	Motion for new trial or to modify judgment	*TRCP 329b(a),(g)*

(Trial court's action or inaction on motion does not affect time for appeal unless motion is granted, and then time runs from new judgment. Does not apply if judgment modified to correct clerical errors under TRCP 316) *TRCP 329b(h)*

Days	Event	
90	File written notice of appeal	*TRAP 26.1(a)*
120	File Clerk's record and reporter's record with court of appeals	*TRAP 35.1(a)*

c. Accelerated Appeal (Quo Warranto and Interlocutory Appeals)

Days	Event	
0	Order or judgment signed	*TRCP 306a*
20	File written notice of appeal	*TRAP 26.1(b)*
30	File Clerk's record and reporter's record with court of appeals (must be within 10 days after notice of appeal is filed)	*TRAP 35.1(b)*

d. Restricted Appeal

Days	Event	
1	Judgment signed	*TRCP 306a*
180	File written notice of appeal (6 months)	*TRAP 26.1*
194	Another party may file written notice of appeal within 14 days of first filing, or 180 days (six months), whichever is later	*TRAP 26.1(d)*
210	File Clerk's record and reporter's record with court of appeals (within 30 days of filing of first notice of appeal)	*TRAP 35.1(c)*

e. Interlocutory Appeal

Unlike the other appeals listed above, an interlocutory appeal is one that appeals an order of the court that is not a final judgment. The party filing an interlocutory appeal usually does so to prevent some court-ordered action from taking place. *Civ. Prac. & Rem. Code Sec. 51.014(b)*

3. Notice of Appeal

A written notice of appeal, filed with the trial court Clerk, is a prerequisite to an appeal in a civil case. Any party seeking to alter the trial court's judgment or an appealable order must file a notice of appeal, (although parties whose interests are aligned may file a joint notice of appeal). If a notice is mistakenly filed with the appellate court, the notice is deemed to have been filed the same day with the trial court Clerk. The appellate Clerk must immediately send the trial court Clerk a copy of the notice. The filing of a notice of appeal immediately invokes the appellate court's jurisdiction. *TRAP Rule 25.1*

a. Contents of Notice

The notice of appeal must: *TRAP 25.1(d)*

- Identify the trial court and state the case's trial court number and style;
- state the date of the judgment or order appealed from;
- state that the party desires to appeal;
- state the court to which the appeal is taken unless the appeal is to either the First or Fourteenth Court of Appeals, in which case the notice must state that the appeal is to either of those courts;
- state the name of each party filing the notice**;**
- in an accelerated appeal, state that the appeal is accelerated;
- in a restricted appeal:
- state that the appellant is a party affected by the trial court's judgment but did not participate—either in person or through counsel--in the hearing that resulted in the judgment complained of;
- state that the appellant did not timely file either a post judgment motion, request for findings of fact and conclusions of law, or notice of appeal; and
- be verified by the appellant if the appellant does not have counsel.

b. Service of Notice

In the copy filed with the appellate court, the notice of appeal must be served on all parties to the trial court's final judgment. In the case of an interlocutory appeal, the notice of appeal must be served on all parties to the trial court proceeding. A copy of the notice of appeal must be filed with the appellate court Clerk.

4. Motion for New Trial

TRCP 324

Generally, a motion for new trial is not a prerequisite to an appeal. However, one must file a motion for new trial in order to preserve certain complaints for appeal. These five specific complaints are listed in TRCP 324(b). A motion for new trial may be filed by any party.

TRCP 329b(a),(b)

A motion for new trial, if filed, shall be filed within 30 days after the judgment or other order complained of is signed. One or more amended motions for new trial may be filed without leave of court before any preceding motion for new trial is overruled and within 30 days after the judgment is signed.

TRCP 329b(c)

If the original or amended motion for new trial is not determined by written order of the court signed within 75 days after the judgment is signed, the motion for new trial shall be considered to be overruled by operation of law.

5. Request for Findings of Fact and Conclusions of Law

TRCP 296

In any case tried in the district or county court without a jury, any party may request the court to state in writing its findings of fact and conclusions of law. Such request must be filed within twenty days after judgment is signed with the Clerk of the court, who shall immediately call such request to the attention of the judge who tried the case. The party making the request shall serve the request on all other parties.

TRCP 297

The court must file its findings of fact and conclusions of law within twenty days after a timely request is filed. A copy of the findings and conclusions is to be mailed to each party in the suit.

TRCP 297

TRCP 21a

If the court fails to file timely findings of fact and conclusions of law, the party making the request shall, within thirty days after filing the original request, file with the Clerk a "Notice of Past Due Findings of Fact and Conclusions of Law" which shall be immediately called to the attention of the court by the Clerk. Such notice must state the date the original request was filed and the date the findings and conclusions were due. Upon filing this notice, the time for the court to file findings of fact and conclusions of law is extended to forty days from the date the original request was filed. The notice must also be served on all parties to the lawsuit.

TRCP 298

After the court files original findings of fact and conclusions of law, any party may file with the Clerk a request for specified additional or amended findings or conclusions. The request for these findings must be made within ten days after the filing of the original findings and conclusions by the court. The court must file any additional or amended findings and conclusions within ten days after such request is filed. No findings or conclusions are to be deemed or presumed by any failure of the court to make any additional findings or conclusions.

6. Restricted Appeal

A party who did not participate, either in person or through counsel, in the hearing that resulted in the judgment complained of and who did not timely file a post judgment motion or request for findings of fact and conclusions of law, or a notice of appeal within the 90 days provided by Rule 26.1(a), may file a notice of appeal within six months after the judgment or order is signed as provided by Rule 26.1(c). *TRAP 30*

Restricted appeals replace "writ of error" appeals to the court of appeals. Statutes pertaining to writ of error appeals apply equally to restricted appeals.

7. Effect of Appeal on Judgment or Court Action

The appellant judgment debtor may supersede a judgment pending appeal by doing any one of the following: *TRAP 24.1*

- filing with the Clerk a written agreement with the judgment creditor for suspending enforcement;
- filing with the Clerk a good and sufficient bond (called a supersedeas bond);
- making a deposit with the Clerk in lieu of a bond;
- providing alternate security ordered by the court.

The Clerk must review and approve all bonds, ensuring they meet the requirements set forth in TRAP 24.2. If cash is deposited in lieu of a bond, the Clerk follows the appropriate procedures for depositing the funds into the registry of court. *TRAP 24.1(c)(3)*

Enforcement of a judgment must be suspended when the judgment has been superseded. If any enforcement actions have begun, they must cease when the judgment is superseded. If execution has been issued, the Clerk will promptly issue a writ of supersedeas when the judgment is superseded. *TRAP 24.1(f)*

An interlocutory appeal generally stays the commencement of a trial pending resolution of the appeal. An exception to this stay is an appeal of an order granting or refusing a temporary injunction or granting or overruling a motion to dissolve a temporary injunction *Civ. Prac. & Rem. Code Sec. 51.014(b) Sec. 51.014(a)(4)*

An interlocutory appeal of an order certifying or refusing to certify a class, or a denial of a motion for summary judgment based on immunity asserted by a government employee or officer, or of an order granting or denying a plea to the jurisdiction by a governmental agency also stays all other proceedings in the trial court pending resolution of that appeal.

An interlocutory appeal of an order (1) denying certain motions for summary judgment, (2) granting or denying a special appearance; and (3) granting or denying a plea to the jurisdiction by a governmental unit is not subject to the stay UNLESS the appellant files the appeal by certain times set out in Section 51.014(c) of the Civil Practice and Remedies Code. *Civ. Prac. & Rem. Code Sec. 51.014(c) and 51.014(e)*

Effective 9/1/11, HB 274 (82nd Legislature) amended Civil Practice and Remedies Code Section 51.014(d) and (e) and added Subsections (d-1) and (f). Subsection (d) allows a trial court in a civil action, on a party's motion or on its own initiative, and by written order, to permit an appeal from an order that is not otherwise appealable if the order to be appealed involves a controlling question of law as to which there is a substantial ground for difference of opinion and an immediate appeal from the order may materially advance the ultimate *Civ. Prac. & Rem. Code Section 51.014(d), (d-1), (e), and (f)*

termination of the litigation. Agreement of the parties is no longer necessary under this Subsection. The new Subsection (d-1) provides that (d) does not apply to an action brought under the Family Code. The amendment to Subsection (e) provides that an appeal under Subsection (d) does not stay proceedings in the trial court unless the parties agree to a stay or the trial or appellate court orders a stay of the proceedings pending appeal. The new Subsection (f) states that an appellate court may accept an appeal permitted by Subsection (d) if the appealing party, not later than the 15th day after the date the trial court signs the order to be appealed, files in the court of appeals having appellate jurisdiction over the action an application for interlocutory appeal explaining why an appeal is warranted under Subsection (d). Then, if the court of appeals accepts the appeal, the appeal is governed by the procedures in the Texas Rules of Appellate Procedure for pursuing an accelerated appeal. The date the court of appeals enters the order accepting the appeal starts the time applicable to filing the notice of appeal.

8. Filing the Record

TRAP 34.1
TRAP 35.3

The Clerk's record (formerly known as the "transcript" and the reporter's record (formerly known as the "statement of facts") comprise the record on appeal. The trial and appellate courts are jointly responsible for ensuring that the appellate record is timely filed. The appellate court must allow the record to be filed late when the delay is not the appellant's fault, and may do so when the delay is the appellant's fault. The appellate court may enter any order necessary to ensure the timely filing of the appellate record.

The party filing the appeal must file the following documents with the District Clerk or County Clerk:

TRAP 9.2(a)(1)
TRAP 25.1(a)
TRAP 20.1(c)(1)
TRAP 34.5(b)(1)

- Notice of appeal;
- Affidavit of indigence, if applicable; and
- A written designation specifying items to be included in the Clerk's record.

TRAP 20.1(d)(1)
TRAP 20.1(a)(2)

When the notice of appeal is accompanied by an affidavit of indigence, the Clerk must send a copy to the court reporter. If the appellant has established his or her indigence, then the Clerk and the reporter must prepare the record on appeal without prepayment.

a. The Clerk's Record

An order of the Supreme Court, adopted pursuant to Texas Rule of Appellate Procedure 34.4, sets out the form of the Clerk's record in civil cases. The order, entitled "Order Directing the Form of the Appellate Record in Civil Cases" is set out in the appendix to the Rules of Appellate Procedure. A copy of the order is included in this manual as Form IV-3.

TRAP 34.2
TRAP 34.5

The parties may, by written stipulation filed with the trial court, agree on the contents of the record on appeal. Unless the parties have so designated the contents of the Clerk's record pursuant to TRAP 34.2, the Clerk's record must include copies of the following:

- all pleadings on which the trial was held;
- the court's docket sheet;
- the court's charge and the jury's verdict, or the court's findings of fact and conclusions of law;
- the court's judgment or other order that is being appealed;

- any request for findings of fact and conclusions of law, any post-judgment motion, and the court's order on the motion;
- the notice of appeal;
- any formal bill of exception;
- any request for a reporter's record, including any statement of points or issues provided for under Rule 34.6(c);
- any request for preparation of the **C**lerk's record;
- a certified bill of costs including the cost of preparing the Clerk's record, showing credits for payments made; and
- any filing that a party designates to have included in the record.

b. The Clerk's Responsibility

TRAP 35.3(a)

The trial court Clerk is responsible for preparing, certifying, and timely filing the Clerk's record when a notice of appeal has been filed and the party responsible for paying for the preparation of the Clerk's record has paid the Clerk's fee, has made satisfactory arrangements with the Clerk to pay the fee, or is entitled to appeal without paying the fee.

c. The Reporter's Record

TRAP 34.1

Unlike the Clerk's record, the reporter's record is not required in order to file an appeal. However, it is common practice to file both records in order to have as complete a record as possible before the court of appeals.

TRAP 34.6(b)

The appellant must make a request in writing to the official court reporter to prepare the reporter's record. The request must designate the exhibits to be included, and which portion of the proceedings are to be included. Also, the appellant must file a copy of the request with the trial court Clerk.

TRAP 34.6(a)

If the court proceedings were stenographically recorded, the reporter's record consists of the court reporter's transcription of the proceedings and any exhibits, as designated. If the proceedings were electronically recorded, then the reporter's record consists of certified copies of the tapes, the exhibits designated, and certified copies of the logs prepared by the court reporter under TRAP 13.2.

TRAP 34.6(g)

At the court reporter's request, the Clerk must turn over original exhibits for use in preparing the reporter's record. The reporter will return the originals to the Clerk after copying them for inclusion in the record.

Any party to the action, the trial court, or the court of appeals may request that the court of appeals receive the original exhibits for review. The trial court must make an order for the safekeeping, transportation and return of the exhibits. The order must list and briefly describe the exhibits.

d. The Reporter's Responsibility

TRAP 35(b).(1),(2),(3)

The official or deputy reporter is responsible for preparing, certifying, and timely filing the reporter's record if:

- a notice of appeal has been filed;
- the appellant has requested that the reporter's record be prepared; and
- the party responsible for paying for the preparation of the reporter's record has

paid the reporter's fee, or has made satisfactory arrangements with the reporter to pay the fee, or is entitled to appeal without paying the fee.

9. Mandate Received

When a mandate is returned on the appeal, it is recorded as part of the case minutes in the lower court. *TRAP 18.1*

P. ANCILLARY PROCEEDINGS

Certain instruments are issued by the Clerk after a judgment has been rendered in a civil case. Since these proceedings are subsequent to the case itself, they are called ancillary. The four most common ancillary proceedings are described in the following paragraphs

1. Abstract of Judgment

For a description of abstracts of judgment, please see Chapter II.C.3.c of this manual.

2. Execution

An execution is a process issued by the Clerk which orders the sheriff or constable to collect a judgment against the defendant. The sheriff either collects money or sells property belonging to the defendant for as much of the judgment as possible. *TRCP 622 TRCP 629 TRCP 630 TRCP 631 TRCP 632 TRCP 633*

The Clerk issues the execution after the expiration of thirty days from the time the court signs the final judgment. Exceptions are: *TRCP 627*

- If a supersedeas bond or notice of appeal has been filed by a party appealing the judgment and has been approved, no execution is issued. *TRCP 634*
- If a timely motion for new trial or in arrest of judgment is filed, the Clerk issues the execution after the expiration of thirty days from the time the order is overruled.
- If the plaintiff files an affidavit that the defendant is about to remove or dispose of property subject to execution, then execution may be issued before the thirtieth day after final judgment. *TRCP 628*

An execution can be issued only if the judgment on which it is based is a valid final judgment. A judgment is not final unless it disposes of all the parties and issues in a suit. *TRCP 627*

An execution cannot be issued if the party against whom a judgment has been entered has filed bankruptcy.

The process for issuing an execution is as follows:

- The plaintiff or his attorney submits a request for the execution. *TRCP 627*
- The Clerk collects the fee and posts the request and fee in the file docket (the amount of the fee charged for issuance is $5.00). *Local Gov't. Code Sec.118.052(1)(C)*
- From the case minutes, the Clerk enters the amount of the judgment, the interest rate, and any court costs due on the execution form. From the registry of the court and the file docket, the Clerk notes any payments made on the judgment and subtracts these payments from the amount to be *TRCP 629*

collected.

- The execution form is completed by entering the case number, style of case, and date of issuance.
- The execution is now recorded in the execution docket, and the volume and page number of the docket record is noted on the execution. *TRCP 656*
- The Clerk signs and seals the execution and sends it to the sheriff or any constable of the county where the defendant's property is located. *TRCP 629*
- When the sheriff makes his return, it is recorded in the execution docket along with the amount collected. *TRCP 629*

3. Order of Sale

An order of sale is a special type of execution which lists specific items of the defendant's property which may be sold to satisfy the judgment. The items to be sold to satisfy the judgment must be set out in the final judgment. The rules and procedures for issuing an order of sale are the same as those for issuing an execution, with the exception that the property ordered to be sold in the judgment is listed on the order of sale form. *TRCP 631*

4. Writ of Garnishment After Judgment

This writ is issued after judgment and after an original attachment has been issued when the plaintiff has found no property of the defendant to execute upon. The writ is actually issued to a third party who holds assets or credits of the defendant which could be used to satisfy judgment. *Civ. Prac. & Rem. Code Sec. 63.001*

TRCP 657
TRCP 658

- The plaintiff files application for writ of garnishment with the Clerk supported by an affidavit stating who holds property of the defendant and the grounds for the writ.
- The Clerk files and dockets this application and affidavit as if an entirely new case was being filed with the garnishee (the third party) as defendant. *TRCP 659*
- The Clerk addresses the garnishment form to the garnishee stating the names of the plaintiff and the judgment defendant, the amount of judgment, the time to answer, the contents of the answer, and commanding the garnishee not to pay any money or deliver any property to the defendant. It is a good practice to include a copy of the judgment with the writ to be served on the garnishee. *TRCP 661*
- The Clerk signs and seals the writ and gives it to the sheriff or constable for his execution and return. *TRCP 662*
- As soon as practicable after service on garnishee, the judgment defendant also is served with a copy of the writ. *TRCP 663a*
- There shall be prominently displayed on the face of the copy of the writ served on the defendant, in ten-point type and in a manner calculated to advise a reasonably attentive person of its contents, the following:

  "To _____, Defendant

  You are hereby notified that certain properties alleged to be owned by you have been garnished. If you claim any rights in such property, you are advised:

YOU HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY BY FILING A REPLEVY BOND. YOU HAVE A RIGHT TO SEEK TO REGAIN POSSESSION OF THE PROPERTY BY FILING WITH THE COURT A MOTION TO DISSOLVE THIS WRIT."

- The Clerk collects $15 for filing the writ of garnishment after judgment plus other fees that would normally be charged for filing a new case. *Local Gov't Code Sec. 118.052*

Q. DRIVERS LICENSE - ESSENTIAL NEED (Occupational Driver's License)

Any person whose driver's license has been suspended for causes other than physical or mental disability or impairment, or other than a conviction under Section 49.04, Penal Code (Intoxicated Driver), may file with the county court or district court having jurisdiction within the county of his or her residence, with the county court or district court having jurisdiction within the county where the offense occurred for which his or her license was suspended, or with a justice court with jurisdiction over the precinct in which the person resides or the offense occurred for which the license was suspended, a verified petition setting forth in detail an essential need for operating a motor vehicle. *Transp. Code Sec.521.242* *HB 438 (83rd Leg.)*

> ***NOTE:*** *A person whose license was automatically suspended or cancelled under Chapter 521 or 522, Transportation Code, and who has not been issued, in the 10 years preceding the date of filing, more than one occupational license following a conviction under the laws of this state may file a petition only with the judge of the county court or district court in which the person was convicted.* *Transp. Code Sec. 521.242(b)*

If the petitioner's license was suspended following a conviction under an offense under Section 19.05, 49.04, 49.07, or 49.08, Penal Code, or an offense to which Section 521.342, Transportation Code, applies, the Clerk of the court shall send by certified mail a copy of the verified petition and notice of the hearing to the attorney representing the state. *Transp. Code Sec. 521.243*

The judge hearing the petition shall enter an order either finding that no essential need exists or an order finding an essential need for operating a motor vehicle. If the judge finds there is an essential need, the judge also, as part of the order, will determine the actual need of the petitioner to operate a motor vehicle and require the petitioner to provide evidence of financial responsibility in accordance with Chapter 601, Transportation Code. *Transp. Code Sec. 521.244*

A certified copy of petition and the court order setting out the judge's findings and restrictions shall be forwarded to the Department of Public Safety. The petitioner may use a copy of the order as a restricted license until the 31st day after the date the order is entered at which time he should have received from the Department of Public Safety a license listing on its face the restrictions and expiration date set out in the order. *Transp. Code Sec. 521.249*

CHAPTER 5

PROBATE

Pursuant to the Texas Legislative Council's statutory revision program, the Texas Probate Code was the subject of a recodification process which began in the 2009 Legislature and continued in the 2011 and 2013 Legislatures. The process has been completed through the enactment of the Estates Code, which became effective January 1, 2014.

All citations to the former Probate Code must now be converted to the correct Estates Code citation.

Many thanks to the Honorable Gladys Burwell, Senior Statutory Probate Judge; Ms. Christy Nisbett, Court Administrator/Staff Attorney, Travis County Probate Court No. 1; and, Mr. David Ferris, Court Services Director, Travis County Clerk's Office. They have graciously permitted the inclusion of the 2014 version of "Responsibilities of the Probate Clerk" (click on text to go directly to document).

CHAPTER 6

CLERK OF THE COMMISSIONERS COURT

A. INTRODUCTION

The County Clerk is the Clerk of the commissioners court. The Clerk shall: *Local Gov't Code Sec. 81.003*

1. serve the court during each of its terms;
2. keep the court's books, papers, records, and effects; and
3. issue the notices, writs, and process necessary for the proper execution of the court's powers and duties.

The court shall require the Clerk to record the proceedings of each term of the court. This record may be in a paper or electronic format. After each term the Clerk shall attest to the accuracy of this record.

The Clerk shall record the court's authorized proceedings between terms. This record may be in paper or electronic form. The Clerk shall attest to the accuracy of the record.

The actual responsibilities of the Clerk in supporting the commissioner's court will vary greatly from county to county. In general, though, the Clerk will perform the following tasks:

- Attend all regular and special meetings as ex officio Clerk of the commissioners court;
- Assist the county judge in preparing the agenda;
- Post notices of the agenda for each meeting;
- Take minutes of all actions; *AG Op. O-6318*
- Index and record minutes;
- Keep the official commissioners court seal and use it to authenticate the official acts of the court; *Local Gov't Code Sec. 81.004*
- Preserve and keep all books, papers, records and effects belonging to the court; *Local Gov't Code Sec. 81.003*
- Issue all notices, writs, and processes necessary for the court; and
- Perform all such other duties as may be prescribed by law.

The duties described in Local Government Code Section 81.003 are vested exclusively with the Clerk or Deputy Clerk and cannot be delegated to other persons. *Local Gov't Code Sec. 81.003*

Cameron County v. Rivera, 761 SW 2d 517 (Tex. Ct. App.-Corpus Christi 1988, no writ)

In addition to the above duties, the Clerk may handle correspondence for the court and assist the commissioners as they sit as special committees.

B. ATTENDANCE AT COMMISSIONERS MEETINGS

Local Gov't Code Sec. 81.005

At the last regular term of each fiscal year of the county, the commissioners court by order shall designate a day of the week on which the court shall convene in a regular term each month during the next fiscal year. If the completion of the court's business does not require a monthly term, the court need not hold more than one term a quarter. The court may meet in special session whenever the need arises. The Clerk, or a Deputy, should attend each session as official recorder of all action taken, and also performs the following duties:

Gov't Code Sec. 551.043

- Notice of any regular or special meeting and agenda must be posted at least 72 hours preceding the meeting. If notice is required or allowed to be posted on the internet, it must be posted continuously for the notice period. Notice on the internet does not negate a requirement to physically post a notice. However, if the notice is continuously posted on the internet, then the physical notice must be accessible only during normal business hours.

Gov't Code Sec. 551.045 Sec. 551.047

- Notice of an emergency meeting must be posted 2 hours before the meeting is convened and any news media requesting notice of an emergency meeting must be notified of such.
- The Clerk should also take to the meeting any applications, instruments, or official documents filed in the Clerk's office which are of interest to the commissioners or that require action on their part. This would include such items as bonds to be approved, instruments relating to special districts under the commissioners' control, and subdivision plats.

C. TAKING MINUTES

Good minutes should leave no doubt in a reader's mind as to exactly what items have been considered by the commissioners court and what action has been taken on each item. The following procedures will help ensure accurate minutes:

- All motions for action should be recorded exactly as they were put forth -- not paraphrased.
- Ideally, the Clerk should record the name of the person making each motion, the name of the person seconding, and the vote of each commissioner upon the motion.
- Such items as contracts, special bills, records of payment, and proclamations will also be recorded in the minutes. The Clerk should either collect these documents at the meeting or make a note of where they will be filed to facilitate subsequent recording.

AG Op. JM-1143 (1990)

NOTE: *Audio tape recordings of commissioners court meetings that are made by the County Clerk as an aid in the preparation of minutes are subject to the provisions of the Open Records Act. The fact that such recordings may be the personal property of the County Clerk does not except them from the Open Records Act.*

D. PREPARING AND RECORDING MINUTES

Local Gov't Code Sec. 81.003

The County Clerk must record the proceedings of each term of the court and shall record the court's authorized proceedings between terms. The Clerk shall attest to the accuracy of the record, which may be in paper or electronic format. The format of the minutes will vary at the preference of the Clerk, but all minutes for a particular meeting should be recorded on consecutive pages of the record book. The Clerk will probably be asked to reproduce the minutes for distribution to the various county offices and to other interested parties.

Additional procedures for recording the minutes are listed below:

- Prior to recording, compare the prepared minutes to the agenda and any notes of the meeting to ensure that the minutes are complete.
- All documents and instruments to be recorded as minutes should be examined for proper seal and signature where either is required.
- Assign each page of the minutes a volume and page number in the permanent record.
- Copy the minutes and bind the copy into the permanent record.
- File the original minutes in an appropriate place after returning any instruments or documents not to be kept in the Clerk's office.

E. INDEXING THE MINUTES

The Clerk should maintain a record book titled "Index to Commissioners Court Minutes" to facilitate access to the minutes. To provide a useful index, many Clerks have adopted the "key word" method of indexing. In this system, each motion, instrument, or document will be cross-indexed under every meaningful or "key" word in its title.

Take for example a motion to "Advertise for Bids to Pave Elm Street." The Clerk may select "Advertise," "Bids," "Pave," and "Elm Street" as key words which would lead an interested party to this particular minute. A secondary key word such as "Capital Improvements" may also be used. The Clerk would then create a separate entry in the index to commissioners court minutes for each key word. The index is kept alphabetically by key word and includes:

- Key word
- Full title of motion, instrument, or document
- Volume and page number of minutes
- Date of commissioners court action

F. SEAL

Local Gov't Code Sec. 81.004

The commissioners court shall have a seal engraved with the words "Commissioners Court, (name of county) County, Texas" and a five-pointed star or other design selected by the court and approved by the Secretary of State.

The Clerk shall keep the seal and use it to authenticate official acts of the commissioners court, or of its presiding officer, or of the Clerk that require a seal for authentication.

CHAPTER 7

UCC FINANCING STATEMENTS

A. INTRODUCTION

Article 9 of the Uniform Commercial Code ("UCC") is codified in Texas as Chapter 9 of the Texas Business and Commerce Code. It applies to the security interest created when a debtor borrows money from a creditor and pledges personal property or fixtures to the creditor to secure the debt. It provides for public notice of a security interest in certain types of collateral through the filing of a financing statement in the public records. After substantial revisions to Chapter 9, most financing statements are filed in the office of the Secretary of State. **See Senate Bill 782 (82nd Leg.) regarding various changes relating to uniform law on secured transactions that go into effect July 1, 2013**. However, financing statements to perfect security interests in real-estate related collateral are required to be filed in the office of the County Clerk where the real property is located. The revisions facilitate electronic filing and electronic communication with the filing offices.

Bus. & Com. Code Sec. 9.501,

Bus. & Com. Code Sec. 9.101,

B. INITIAL FILINGS

1. Types of Collateral

The County Clerk's office is the proper office in which to file financing statements if (1) the collateral is as-extracted collateral or timber to be cut or (2) if the financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures. In all other cases, the Secretary of State's office is the proper office in which to file.

Bus. & Com. Code Sec. 9.501

2. Contents of Financing Statement

Bus. & Com. Code Sec. 9.502

- A financing statement is sufficient only if it provides the name of the debtor;
- Provides the name of the secured party or a representative of the secured party;
- Indicates the collateral covered by the financing statement.
- Indicates that it covers extracted collateral or timber to be cut, or that is filed as a fixture filing and covers goods that are or are to become fixtures
- Indicates that it is to be filed for record in the real property records
- Provides a description of the real property to which the collateral is related sufficient to give constructive notice of a mortgage under the law and the description were contained in a record of the mortgage of the real property.
- If the debtor does not have an interest of record in the real property, provides the name of a record owner.

3. A record of a mortgage is effective:

- From the date of recording, as a financial statement filed as a fixture filing or as a financing statement covering as-extracted collateral or

timber to be cut only if:

1. the record indicates the goods or accounts that it covers
2. the goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;
3. the record satisfies the requirements for a financing statement other than an indication that it is to be filed in the real property records
4. the record is duly recorded.

4. Reasons to Refuse a Filing

A Clerk's office must refuse to accept a record for initial filing for the following reasons:

Bus. & Com. Code Sec. 9.516 Sec. 9.520(a)

- The record is not communicated by a method or medium of communication authorized by the Clerk's office.
- An amount equal to or greater than the applicable filing fee is not tendered.
- The Clerk's office is unable to index the record because:
  - The record does not provide a first and last name for the debtor. See Senate Bill 782 (82nd Leg.), for provisions which take effect July 1, 2013 regarding sufficiently providing the name of the debtor.
  - The record does not provide a sufficient description of the real property to which it relates.
- The record does not provide a name and mailing address for the secured party of record.
- The record does not:
  - Provide a mailing address for the debtor.
  - Indicate whether the debtor is an individual or an organization.
  - If the debtor is an organization, provide:
    The information required by the amended form adopted by the International Association of Commercial Administrators (IACA) in July of 2013. SB 474 from the 83rd Legislature amended Section 9.516 of the Business and Commerce Code so that the requirements in the statute mirror rather than conflict with the changes to the IACA industry standard form.

If the Clerk is unable to read or decipher the information in the tendered record, then the record does not provide the information. Any record that does not indicate that it is an amendment or does not identify an initial filing statement to which it relates is considered to be an initial filing statement.

Bus. & Com. Code Sec. 9.516(c)

If the Clerk refuses to accept a record for filing, the fact of and the reason for the refusal and the date and time the record would have been filed had the Clerk accepted it must be communicated to the person who presented the record. *See* Form VII-1 for a sample form that can be used as a means of communication. The

Bus. & Com. Code Sec. 9.520(b)

communication must be made in no event more than two business days after the Clerk receives the record.

Note that a financing statement or a continuation statement filed in the County Clerk's office **need not be signed**. This omission of the signature requirement was intended to facilitate paperless filing. A financing statement also need not contain an acknowledgment or jurat.

Bus. & Com. Code Sec. 9.502

A.G. Op. JC-0526 (2002)

Prop. Code Sec. 12.001(c)

5. Forms

A written initial financing statement and amendment must be on an industry-standard form, including a national standard form or a form approved by the International Association of Commercial Administrators, adopted by the Secretary of State.

Bus. & Com. Code Sec. 9.5211

Except for the reasons noted in the section above, the Clerk's office cannot refuse to accept a record on an industry-standard form.

6. Procedures for Filing

For each record filed in the Clerk's office, the Clerk must:

Bus. & Com. Code

Sec. 9.519
Sec. 9.519(a)

A.G. Op. JC-0526 (2002)

Bus. & Com. Code Sec. 9.502(b)(2) Sec. 9.519(d) Sec. 9.519(f)

- Assign a unique number to the financing statement;
- Create a record that bears the number assigned to the financing statement and the date and time of filing (for paper filings, the number and date and time may be marked on the financing statement itself);
- Collect the filing fee and enter it into the office's bookkeeping system;
- File the financing statement in the real property records;
- Index the financing statement under the names of the debtor and of each owner of record shown on the financing statement, and also under the name of the secured party, as if they were the grantor(s) and grantee under a deed of trust on the real property; and
- Maintain the filed financing statement for public inspection.

> ***NOTE:*** *Clerks who use a software package to facilitate recording duties will follow the same procedures and allow for public access.*

C. SUBSEQUENT FILINGS

All subsequent filings (such as assignments, continuation statements, etc.) of financing statements for which the initial filing is to be in the County Clerk's office must be linked to the initial financing statement to which they relate.

Bus. & Com. Code Sec. 9.519(f)

1. Amendments

Amendments to the initial financing statement are filed in order to amend a previously filed financing statement by terminating its effectiveness, continuing its effectiveness, assigning all or part of the assignor's interest, changing the name or address of a party, deleting or adding a party, or changing collateral.

Bus. & Com. Code Sec. 9.512 Sec. 9.513 Sec. 9.514

2. Corrections

Any person named as a debtor or a secured party may file in the Clerk's office a correction statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed. A correction statement must:

Bus. & Com. Code Sec. 9.518 SB 782 82nd Legislature, effective July 1, 2013

- Identify the record to which it relates by the file number assigned to the initial financing statement;
- Indicate that it is a corrected statement; and
- Provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.
- The filing of a correction statement does not affect the effectiveness of an initial financing statement or other filed record. Filing of a correction statement is not effective as an amendment to a filed financing statement and is not sufficient to effect a change in the manner in what the filing office has indexed a financing statement or information contained in a financing statement.

Bus. & Com. Code Sec. 9.517

- The failure of the filing office to index a record or to correctly index information contained in a record does not affect the effectiveness of the filed record.

D. CONSUMER GOODS FILINGS

Before July 1, 2001, the proper place to file a financing statement to perfect a security interest in consumer goods was the office of the County Clerk. Effective July 1, 2001, the proper place to file those financing statements is the office of the Secretary of State. Filings that affect financing statements filed before July 1, 2001, also must be filed with the Secretary of State, with one narrow exception of termination financing statements.

Bus. & Com. Code Sec. 9.501

A.G. Op. JC-0526 (2002)

1. Terminating a Financing Statement

A financing statement to terminate the effectiveness of a financing statement on consumer goods that was filed with the County Clerk before July 1, 2001, must be filed in the County Clerk's office, unless an initial financing statement relating to the pre-effective-date financing statement has been filed in the office of the Secretary of State.

Bus. & Com. Code Sec. 9.513 Sec. 9.707(d)

A.G. Op. JC-0526 (2002)

2. Amending or Continuing a Financing Statement

A financing statement to continue the effectiveness of or amend a financing statement that was filed in the office of the County Clerk before July 1, 2001 to perfect a security interest in consumer goods must be filed in the office of the Secretary of State.

Bus. & Com. Code Sec. 9.707(c),(e)

A.G. Op. JC-0526 (2002)

E. REQUEST FOR INFORMATION

The Clerk's office is required to respond within two business days to the following requests for information:

Bus. & Com. Code Sec. 9.523

- Whether there is on file any financing statement that

- Designates a particular debtor or, if the request so states, designates a particular debtor at the address specified in the request ;
- Has not lapsed under Section 9.515 with respect to all secured parties of record; and
- If the request so states, has lapsed under Section 9.515 and a record of which is maintained by the filing office under Section 9.522(a); and

- The date and time of filing of each financing statement~~;~~
- The information provided in each financing statement; and
- The number assigned to the record.

Form UCC-11, Information Request, may be found on the Secretary of State's website at www.sos.state.tx.us/ucc/forms/ucc11.pdf.

F. FEES

The fees for filing in the real property records are as described in Chapter II of this manual and as prescribed by the Local Government Code.

Local Gov't Code
Sec. 118.011
Sec. 118.013

CHAPTER 8

VITAL STATISTICS

A. INTRODUCTION

The County Clerk's involvement in the area of vital statistics is principally in the issuing of marriage licenses, and the recording of birth and death certificates and the issuing of certified copies of the same. The Clerk is closely supported in these activities by the Vital Statistics Unit ("VSU") of the Texas Department of State Health Services in Austin (formerly known as the Bureau of Vital Statistics of the Texas Department of Health).

Each year, the VSU holds a seminar for all local registration officials to discuss new laws, regulations, forms, and procedures relating to vital records. The VSU also publishes a comprehensive manual which covers all aspects of the vital statistics system of Texas. A copy of this *Vital Statistics Manual* is sent to all Clerks or may be obtained at the seminar. This manual and the Texas Family Code should be used as the primary source of information concerning the handling of all vital records.

B. BIRTH AND DEATH CERTIFICATES

At one time, the Clerk was required to record all birth and death certificates. Now, this responsibility is shared with local registration officials of vital statistics in most of the larger cities. In 1987, the legislature made provisions for the consolidation of county and municipal maintenance of birth and death records.

Health & Safety Code Sec. 191.023

In 1987, the legislature also closed birth records and death records to public inspection and placed them under the control of the Department of State Health Services (formerly known as the Department of Health) or local registration officials.

Gov't Code Sec.552.115

Birth and death records maintained by the Vital Statistics Unit of the Texas Department of State Health Services or by a local registration official are closed to public inspection, except that:

Gov't Code Sec. 552.115(a)

Local Gov't Code Sec. 191.004(c)

a. a birth record is public information and available to the public on and after the 75th anniversary of the date of birth as shown on the record filed with the bureau of vital statistics or local registration official;

b. a death record is public information and available to the public on and after the 25th anniversary of the date of death as shown on record filed with the Vital Statistics Unit or local registration official; and

c. a general birth or death index established and/or maintained by the bureau of vital statistics is open to the public, only to the extent that the index relates to a record as described in (a) or (b) above.

NOTE: *The Genealogical Society of Utah shall have access to birth records on and after the 50th anniversary of the date of birth but such birth records shall not be made available to the public until the 75th anniversary of the date of birth.*

Gov't Code Sec. 552.115(d)

In issuing a certified copy of a birth certificate, the area entitled "for medical and health use only" shall not be considered a part of the legal certificate of birth, and the information contained in this area is confidential. This area should be covered when a copy of the certificate is made. This information may not be released or made public on subpoena or otherwise, except that release may be made for statistical purposes only so that no person, patient, or facility is identified, or to medical personnel of a health care entity, as that term is defined in Subtitle B, Title 3, Occupations code, or to a faculty member at a medical school, as that term is defined in Section 61.501, Education Code, for statistical or medical research, to appropriate state or federal agencies for statistical research.

Health & Safety Code Sec. 192.002(b)

HB 3253 (83rd Leg.)

Similarly, the social security numbers and signatures of the mother and father are not part of the legal birth certificate and should only be made available in the limited circumstances set out in Section 192.002(c) and (d), Health and Safety Code.

Health & Safety Code Sec. 192.002(c) and (d)

A person who knowingly violates Section 192.002(b), Health and Safety Code, knowingly induces or causes another to violate that section, or knowingly fails to comply with a rule adopted under that section is guilty of a Class A misdemeanor.

Health & Safety Code Sec. 195.005

1. Certified Copies

When a Clerk is called upon to issue certified copies of vital records, the Clerk must shall charge the same fees as charged by the Vital Statistics Unit. A $10.00 fee is charged to conduct each search for a record. The fee for a certified or a regular copy of a birth certificate is $10.00 per copy; this includes the search fee.

Health & Safety Code Sec. 191.0045(d)

25 TAC '181.22

The fee for a certified copy of a death certificate is also $10.00, which includes the search fee. If more than one copy is requested in the same initial request of death certificates only, the fee will be $10.00 for the first copy and then $3.00 for each additional copy requested by the applicant at the time.

In addition to the fees listed above, the Clerk must collect an additional $2.00 surcharge for searching for and issuing a certified copy of a certificate of birth, a wallet-sized birth certificate, and for conducting a search for a certificate of birth. The Clerk shall remit $1.80 of the fee collected for a certified copy to the Comptroller.

Health & Safety Code Sec. 191.0045(e)
Health & Safety Code Sec. 191.022(f)

Also in addition to the fees listed above, the Clerk must add a Texas Online fee of $10.00 to all requests for birth, death, marriage and divorce record searches and document production.

25 TAC §181.22(s)

For example: the fee for a certified copy of a birth certificate is $22.00

25 TAC §181.22(a), (b), (c), (f), and (s)

- $10.00 for the search and the copy
- $2.00 surcharge
- $10.00 Texas Online

Additional copies of the birth certificate are $10.00 per copy.

The fee for a certified copy of a death certificate is $20.00. Additional copies of the death certificate requested at the same time are $3.00.

NOTE: *A Clerk that on March 31, 1995, was charging a fee for the issuance of a certified copy of a birth certificate that exceeded the fee charged by the bureau of vital statistics for the same type of certificate may continue to do so but shall not raise the fee until the fee charged by the bureau exceeds the fee charged by the Clerk. However, the Clerk must still charge the additional $2.00 fee for the services listed above.*

Health & Safety Code Sec. 191.0045(g)

The Clerk may also collect a fee not to exceed $1.00 for the preservation of vital statistic records. The fee is to be collected upon the issuance of a vital statistics report, including a record issued through a Remote Birth Access site. This $1.00 fee is retained by the county. HB 2717 (82nd Legislature) amended Subsection (h) and added Subsection (i) to Section 191.0045. The fee may be used for preserving vital statistics records, training registrar or County Clerk employees regarding vital statistics records, and ensuring the safety and security of vital statistics records.

Health & Safety Code Sec. 191.0045(h) and (i)

The remaining fees are sent to the comptroller, as provided by Subchapter B, Chapter 133.

It is strongly recommended that a Clerk request a written application signed by the applicant for any certified copies, which should be kept on file. Due to fraud and the selling of birth records, this record will assist in answering inquiries about certified copies from the Clerk's office. It is recommended that the Clerk get identification from the applicant and retain the application for more than five years.

2. Delayed Certificates of Births and Deaths

If a birth has not been registered within one year from the date of birth, the registrant may apply to the State Registrar of Vital Statistics for a delayed certificate of birth. The Clerk may obtain necessary forms from the Vital Statistics Unit to assist the public with the procedure. The fee charged by the state registrar for each application for a delayed certificate of birth is $25.00 for filing the delayed certificate, plus $22.00 ($10.00 for copy + $2.00 surcharge + $10 Texas Online) for a certified copy of the delayed certificate of birth.

Health & Safety Code Sec. 192.022 Sec. 192.027

TAC 25 181.22

3. Amended Certificates of Births and Deaths

Errors or omissions in the content of original birth or death certificates may be corrected or completed by the filing of amendments with the state registrar. The Clerk receives copies of these amendments and attaches them to the original certificates and changes the original index if necessary. The state registrar charges a $15.00 fee for filing the amendment to correct a birth or death certificate.

Health & Safety Code Sec. 191.028

25 TAC '181.22

4. Adoptions

After an adoption, the state registrar prepares and files a new birth certificate showing the facts as established by adoption. The state registrar sends copies of the new certificates to the County Clerk of the county of birth. The Clerk, if possible, pulls the original birth certificate from the files and sends it to the Vital Statistics Unit. The index to the original certificate is obliterated. The new birth certificate, containing the child's new name, will then be recorded and indexed. A fee of $25.00 is charged by the state registrar for filing a new birth certificate based on adoption.

Health & Safety Code Sec. 192.006

25 TAC '181.8

25 TAC '181.22

5. Amended Birth Certificate Based on Legitimation or Paternity Determination

A special form is used for this procedure. Clerks can obtain this form from the Vital Statistics Unit.

Health & Safety Code Sec. 192.006

To file a new birth certificate based on legitimation, the Clerk forwards to the Vital Statistics Unit:

25 TAC §181.8

- a certified copy of the certificate of marriage of the parents;
- an Acknowledgment of Paternity (Form V5-159.1); or
- a certified copy of the court order concerning legitimation if the information in the order is not already on file.

When possible, the Clerk shall remove the original birth certificate from the file and forward it to the VSU along with the other information required.

A fee of $25.00 is charged by the state registrar for filing a new birth certificate based on legitimation or paternity determination.

25 TAC '181.22

When the legitimation birth certificate is received back in the Clerk's office, indexes and records will be handled in the same manner as for adoptions.

6. Notation of Death on Birth Certificates

When a person whose birth has been registered in this state dies , the state registrar shall make a conspicuous notation on the face of the decedent's birth certificate that the person is dead, shall conspicuously note the person's date of death and certificate number on the person's birth certificate and shall provide computer-generated abstracts, transcripts, or copies of the death certificate to the County Clerk of the county in which the decedent was born and to the appropriate local registrar. On receipt of the notification of death, the County Clerk and the local registrar shall conspicuously note the person's date of death and certificate number on the person's birth certificate.

Health & Safety Code Sec. 191.034

A number of County Clerks have a rubber stamp with the word "DECEASED" in approximately 2" letters, and use this stamp to make the required 'conspicuous notation' on the face of the affected birth certificates.

C. MARRIAGE LICENSES

A man and a woman wishing to get married must obtain a marriage license from the County Clerk of any Texas county. County Clerks issue all marriage licenses in the State of Texas. In counties in which branch offices are authorized by statute, marriage licenses may be issued from the Clerk's branch office as well as the Clerk's main office.

Family Code Sec.2.001, 2.002 and 2.004

Health & Safety Code Sec. 194.0011

A marriage license may not be issued for persons of the same sex. The marriage license application must be on a form prescribed by the Vital Statistics Unit, which will include additional questions as mandated by the 79th Legislature.

Const. Art. I, Sec. 32

The fee for a marriage license is $60.00.

Local Gov't Code Sec. 118.011(a)(7)

The marriage license fee is for issuing a marriage license, including every service related to issuing the license, including preparing the application, filing health

Local Gov't Code Sec. 118.018(a) and (b)

certificates, administering oaths, filing waivers and orders of the county judge, and issuing and recording all papers including the return of the license. The fee must be paid at the time the license is issued.

The Clerk deposits $20 of the marriage license fee to be sent to the comptroller for the child abuse and neglect prevention trust fund established under Sec. 40.105, Human Resources Code.

Local Gov't Code Sec. 118.022(a)(1)

The Clerk deposits $10 of the marriage license fee to be sent to the comptroller for the family trust fund established under Sec. 2.014, Family Code.

Local Gov't Code Sec. 118.022(a)(2)

An applicant for a marriage license pays no application fee if he or she: (1) completed a premarital education course; and (2) provided a course completion certificate to the County Clerk showing that the course was completed not more than one year before the filing of the marriage license application.

Local Gov't Code Sec. 118.018(b-1)
SB 1836 (83rd Leg.) provides for a voluntary $5 contribution for the Texas Home Visiting Program

Upon proper execution of the application, the Clerk shall:

Family Code Sec. 2.009(c)

- Prepare the license
- Enter the names of the licensees, the date and time the license was issued, and the name of any proxy applicant on the license
- Distribute to each applicant written notice of the online location of the information prepared under Section 2.010 regarding HIV and AIDS and note on the license that the distribution was made;

HB 984 and SB 355 (83rd Leg.)

- Inform each applicant that a premarital education handbook developed by the child support division of the office of the attorney general under Family Code Section 2.014 is available on the child support division's Internet website or if the applicant does not have Internet access, how the applicant may obtain a paper copy of the handbook.

It is good practice to record and index the marriage license before returning it to the applicants. The Clerk must also make a copy of each license issued, to be mailed to the Vital Statistics Unit no later than 90 days after the license is issued. Most Clerks make it a practice to file the application copies on the first day of each month to insure compliance.

Family Code Sec. 2.011

Health & Safety Code Sec. 194.001

1. Application for License

Persons applying for a license must:

Family Code Sec. 2.002

- Appear together or separately before the County Clerk
- Submit proof of identity and age as required by Section 2.005(b).. The County Clerk shall require proof of identity and age of each applicant to be established as specified in Section 2.005(b).(Some Clerks make photocopies of the proof submitted and attach it to the application.)

Family Code Sec. 2.005

- Provide the information applicable to that person for which spaces are provided in the application for a marriage license
- Mark the appropriate boxes provided in the application
- Take the oath printed on the application and sign the application before the County Clerk.

- It is a Class A misdemeanor for a person to knowingly submit inaccurate information to the Clerk.

Family Code Sec. 2.009(a) Sec. 6.801 Sec. 6.802

Section 2.009 of the Family Code sets forth a number of instances in which a County Clerk may not issue a marriage license. A license cannot be issued if either applicant has been divorced within the last 30 days; the license can be issued on the 31st day after the decree is issued. This restriction does not apply when divorced spouses are remarrying each other or when the applicant has received a waiver from a court and a record of the proceedings was made and preserved, or findings of fact and conclusions of law were filed by the court. If either applicant or both applicants have been divorced within the last 30 days but in another state, the Clerk must mark the "yes" square on the marriage license application and indicate in what state the divorce(s) was granted.

Family Code Sec. 2.009(b)

If either applicant provides information indicating he or she is presently married, the Clerk may ascertain if the applicant is married to the other applicant. If so, the Clerk shall record that statement on the license prior to the admission of the oath. The Clerk may not refuse to issue a license on the ground that the applicants are married to each other.

Family Code Sec. 2.009(d)

> ***NOTE:*** *The County Clerk may not refuse to issue a license to an applicant on the ground that the applicant checked "false" in response to the statement, "I am not presently delinquent in the payment of court-ordered child support."*

Family Code Sec. 2.102 Family Code Sec. 2.009(a)

For minors to receive marriage licenses, the Clerk may accept a parental consent signed before any County Clerk or, if from another state, from the officer authorized to issue marriage licenses of that state. The consent is effective for 30 days after the date of signing. A marriage license may not be issued if either applicant is under age 16.

Family Code Sec. 2.101 Sec. 2.103

A minor does not need parental consent if the minor is divorced or if the minor has been issued a court order authorizing the marriage.

Family Code Sec. 2.201 SB 1317 (83rd Leg.)

A marriage license is valid for 89 days from the date of issuance. If the marriage license has not been used before the 90th day after it was issued, the license expires. The applicants must obtain a new marriage license and repay the fee.

Family Code Sec. 2.009(c) Sec. 2.204

The Clerk shall indicate the time at which the license was issued on the license. The marriage ceremony may not take place during a 72-hour period immediately following the issuance of the marriage license unless an applicant:

- is a member of the armed forces of the United States and on active duty;
- performs work for the United States Department of Defense as an employee or contract worker;
- obtains a written waiver from a judge of a court with jurisdiction in family law cases, a justice of the supreme court, a judge of the court of criminal appeals, a county judge, or a judge of a court of appeals; or
- completes a premarital education course described by Section 2.013 and who provides a completion certificate to the Clerk.

2. Underage Applicants

Family Code Sec. 2.102 Sec. 2.103

If the applicant is 16 years of age or older but under the age of 18, the County Clerk shall issue the license if parental consent is given as prescribed by law, or if the

minor has obtained the appropriate court order granting him/her permission to marry.

Parental consent must be evidenced by a written declaration on a form supplied by the County Clerk in which the person consents to the marriage and swears that the person is a parent (if there is no judicially designated managing conservator or guardian of the applicant's person) or a judicially designated managing conservator or guardian (whether an individual, authorized agency, or court) of the applicant's person.

Family Code Sec. 2.102(b)

A County Clerk or Deputy Clerk who violates or fails to comply with provisions relating to underage applicants is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $200 nor more than $500.

Family Code Sec. 2.012

3. Persons Authorized to Conduct Ceremonies

The person who conducts the ceremony shall enter on the license the date and county in which it was performed and his or her name as the person who performed the ceremony, subscribe it and return the license to the County Clerk who issued it within 30 days after the ceremony is conducted. Section 2.202 lists those persons who are authorized to conduct marriage ceremonies. SB 1317 from the 83rd Legislature amended Section 2.202 to authorize a retired judge of a municipal court and a retired judge or magistrate of a federal court of Texas to conduct a marriage ceremony.

Family Code Sec. 2.206 Sec. 2.202

A person who conducts a marriage ceremony in violation of Section 2.202 is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $200 nor more than $500. A person who knowingly conducts a marriage ceremony involving a minor whose marriage is prohibited by law or a person who by marrying is guilty of bigamy (Penal Code 25.01) commits a third degree felony.

Family Code Sec. 2.202(d)

4. Proxy Marriage or Absent Applicant

Section 2.002 of the Family Code states the general rule that each person applying for a marriage license must appear before the County Clerk (either with the person the applicant intends to marry or alone) and complete the application. An exception to this general rule is found in Section 2.006 which states that " if an applicant is unable to appear personally before the County Clerk to apply for a marriage license, any adult person or the other applicant may apply on behalf of the absent applicant."

Family Code Sec. 2.002 Sec. 2.006

The Clerk may not issue a marriage license for which both applicants are absent unless the person applying on behalf of each applicant provides an affidavit to the Clerk stating that the absent applicant is:

Family Code Sec. 2.006(c)

- a member of the United States armed forces stationed in another country in support of combat or another military operation .

HB 869 (83rd Leg.)

The person applying on behalf of an absent applicant must present the following to the Clerk:

Family Code Sec. 2.006(b)

- an affidavit from the absent applicant which complies with the requirements of Section 2.007 (Form VIII-1) or, if the applicant is an inmate, a declaration in support of proxy which complies with the requirements of Section 2.007 (Form VIII-2);
- proof of the absent applicant's identity and age; and
- if the absent applicant is underage, the documents establishing parental consent, or documents establishing that a prior marriage has been

dissolved, or a court order authorizing the marriage.

Family Code Sec. 2.007

The affidavit from the absent applicant must include:

- his or her full name (including the maiden surname, if applicable), address, date of birth, place of birth, citizenship, and social security number, if applicable;
- a declaration that the absent applicant has not been divorced within the last 30 days;
- a declaration that the absent applicant is not presently married (unless to the other applicant and they wish to marry again);
- a declaration that the other applicant is not related (including as a former or present stepchild or stepparent) to the absent applicant;
- a declaration that the absent applicant desires to marry, and the name, age, and address of the person to whom the absent applicant desires to be married;
- the approximate date on which the marriage is to occur;
- the reason the absent applicant is unable to appear personally before the County Clerk; and
- if the absent applicant will be unable to attend the ceremony, the appointment of any adult, except the other applicant, to act as proxy for the purpose of participating in the marriage ceremony.

5. Informal Marriages

Family Code Sec. 2.401(a)(2)

An informal marriage, also called a common-law marriage, is more than merely "living together." The parties to an informal marriage must have agreed to be married, lived together as husband and wife after such agreement, and represented to others that they were married.

Canady v. Russell (138 SW 3d 412,Tx. App. - Tyler 2004, pet. denied)

> ***NOTE:*** *Living together as husband and wife is a crucial element of an informal marriage. The intent to cohabit after an agreement to marry is not sufficient to satisfy this element; without actual cohabitation, an informal marriage does not exist in a form recognized by the State of Texas.*

Family Code Sec. 2.401 Sec. 2.401(d) Sec. 2.402 Sec. 2.404(b)(2)

Declaration of Informal Marriage. Couples in an informal marriage may wish to make it a matter of record without formal ceremony. To accomplish this, the couple must sign a declaration and file it with the County Clerk. A person who is presently married, and the current spouse is not the other party to the informal marriage, may not be a party to or file a declaration of an informal marriage. A person under the age of 18 may not be a party to an informal marriage, and may not execute a declaration of informal marriage.

Family Code Sec. 2.403

The Clerk shall require proof of the identity and age of each party to the declaration of formal marriage. Identity and age may be established by a certified copy of the party's birth certificate, or by certificate or other document issued by a state, the United States, or a foreign government. A person who knowingly provides inaccurate information commits a Class A misdemeanor.

Family Code Sec. 2.404

The declaration must be completed in the presence of the County Clerk or Deputy. No person other than the parties to the informal marriage may make the declaration, and only the County Clerk or Deputy may certify the declaration. A blank

form should never be provided for completion outside the presence of the Clerk or Deputy.

The Clerk shall verify that all required information has been provided, and that any required documents have been submitted. The Clerk then administers the oath to each party, has each party sign the declaration in his or her presence, and executes the Clerk's certificate.

The Clerk shall distribute printed materials to each party concerning AIDS and HIV. These materials are prepared by and provided to the Clerk by the Department of State Health Services. The Clerk shall note on the declaration that the distribution of materials was made.

The Clerk records the declaration and any documents submitted with it. The original declaration is returned to the parties, and a copy is submitted to the Vital Statistics Unit. The copy must be submitted no later than 90 days after the declaration is executed.

Family Code
Sec. 2.404(c)

Health & Safety Code
Sec. 194.001(b)

The fee for a declaration of informal marriage is $25.00.

Local Gov't Code
Sec. 118.011(a)(8)
Sec. 118.019

The Clerk deposits $12.50 of the fee for recording a declaration of information marriage to be sent to the Comptroller for the child abuse and neglect prevention trust fund established under Sec. 40.105, Human Resources Code.

Local Gov't Code
Sec. 118.022(a)(1)

CHAPTER 9

ELECTIONS

The County Clerk or the county elections administrator has many duties and responsibilities in the conduct of elections. The duties may be assigned to and performed by deputies. Laws governing the conduct of elections (primary, special, and general) are found in the Texas Election Code.

The Secretary of State is the chief election officer of Texas. As such, he or she is charged with the responsibility of interpreting election laws.

The Elections Division of the Secretary of State's Office issues directives, memoranda, sample ballots, copies of election forms, calendars of important election dates and handbooks for judges and Clerks on polling place procedures for each of the different voting systems approved for the conduct of elections in Texas. The Elections Division has a videotape on polling place procedures, which are common to all elections, available for use in the instruction of judges and Clerks. The Elections Division staff also conducts election schools for election judges and Clerks upon request.

In addition, the Elections Division holds an "elections school" each year. The elections school usually takes place in August, is held in Austin, and usually lasts two and one-half days. At the school, the Clerk's duties are covered in detail, forms are distributed, and directives and handbooks with all the information needed to conduct an election of any nature are provided.

The County and District Clerks' Association urges each Clerk to place this seminar in budget requests every year and make plans to attend the seminar. This is a very important area of the responsibilities of a Clerk and with the increasing frequency of election contests and court cases, it is most important that elections be conducted in strict accordance with the Election Code.

Any questions regarding elections may be directed to the Elections Division, P.O. Box 12060, Austin, Texas 78711-2060. The Elections Division may also be reached by email, elections@sos.state.tx.us or telephone, (800) 252-8683.

Information is most readily and easily available on the Secretary of State's web site: http://www.sos.state.tx.us/about/index.shtml. There is a section called "Conducting Your Elections" (under the "Election Information" icon on the home page) that contains procedures, forms, pamphlets, and laws, including a link to the full text of the Texas Election Code.

The Secretary of State's website has a special section dealing with local option liquor elections. Forms relevant to local option elections are also available. Go to www.sos.state.tx.us/elections/laws/liquorelections.shtml for liquor elections, and www.sos.state.tx.us/elections/forms/index.shtml for local option forms.

CHAPTER 10

OTHER DUTIES

A. INTRODUCTION

This manual has covered procedures relating to the majority of the duties and responsibilities of the County Clerk. There remain, however, a large number of duties that can only be classified as miscellaneous. Some of these duties are applicable to all Clerks while some may be assigned to individual Clerks on a local basis. A few common duties are outlined below.

B. ACCOUNTING SYSTEM

Local Gov't Code Sec. 114.041

Each County Clerk must maintain an accounting system which adequately reports all receipts of money and its subsequent disbursement. Accounting systems vary so greatly that no procedural description is possible here. It is suggested that the county auditor be consulted regarding any question about the accounting system.

C. REGISTRY OF THE COURT AND TRUST FUND ACCOUNTS ADMINISTERED BY COUNTY CLERKS

Local Gov't Code Sec. 117.025 Sec. 117.001

Each County Clerk must maintain a registry of the court to receive payments of judgments, bonds, and other funds ordered to be paid by the court. The commissioners court in each county will select a depository for the registry funds. An account in the selected depository in which registry funds are placed is called a "special account." In some cases, the Clerk is directed to transfer funds from the special account into a separate interest-bearing account called a "separate account."

Local Gov't Code Sec. 117.0521

The Clerk acts only in a custodial capacity in relation to a registry fund. A Clerk is not a trustee for the beneficial owner and does not assume the duties, obligations, or liabilities of a trustee for a beneficial owner.

Local Gov't Code Sec. 117.054

If a special or separate account earns interest, the Clerk, at the time of withdrawal, distributes the original amount deposited into the registry according to the direction of the court. Any interest credited to the account should be distributed according to the following calculation:

1. 10 percent of the interest must be paid to the general fund of the county to compensate the county for the accounting and administrative expenses of maintaining the account.

Local Gov't Code Sec. 117.054

2. 90 percent of the interest must be credited to the special or separate account.

Local Gov't Code Sec. 117.055

To compensate the county for the accounting and administrative expenses incurred in handling the registry funds that have not earned interest, including funds in a separate or special account, the Clerk will, at the time of withdrawal, deduct from the amount of the withdrawal a fee in an amount equal to five percent of the withdrawal, not to exceed $50.00. A fee collected under this section must be deposited in the general fund of the county. Withdrawal of funds generated from a case arising under the Family Code is exempt from the fee deduction.

HB 1658 82nd Leg.

SPECIAL NOTE: HB 1658 from the 82nd Legislature amended Article 17.02 of the Code of Criminal Procedure. The statute now allows for the return of cash bail bonds to the person who posted the money and was given a receipt. However, the amended statute

also declares that the amount of money to be refunded is "the amount reflected on the face of the receipt." Thus, the statute now conflicts with Section 117.055 of the Local Government Code as it pertains to refunds of cash bonds. Although Section 117.055 requires Clerks to retain the lesser of $50 or 5% of the cash bond amount, when two statutes are in irreconcilable conflict, the latest statute in time controls. The amendment to the Code of Criminal Procedure is the latest statute in time, so it controls. Thus, Clerks **cannot** withhold the $50 or 5% when refunding cash bail bonds.

CCP Art. 17.02

Local Gov't Code Sec. 117.055

If any funds deposited into the court registry are placed into an interest-bearing account, any person with a taxable interest in the funds must submit appropriate tax forms and provide correct information to the Clerk so that the interest earned on such funds can be reported to the Internal Revenue Service. The information and forms provided to the Clerk are not subject to public disclosure except to the extent necessary to comply with federal tax law requirements.

Local Gov't Code Sec. 117.003

The Clerk is authorized to pay any or all of the interest earned on funds deposited in the registry, without court order, to the Internal Revenue Service to satisfy tax withholding requirements.

***NOTE:** Regarding Liability for Deposits Pending Suit*

A County Clerk who has custody of a sum of money, a debt, an instrument, or other property paid to or deposited with a court pending the outcome of a cause of action shall seal the property in a secure package in a safe or bank vault that is accessible and subject to the control of the court.

Civ. Prac. & Rem. Code Sec. 7.002(a)

The Clerk must keep in his or her office as part of his or her records an itemized inventory of property deposited with the court. The inventory must list the disposition of the property and the account for which the property was received.

Civ. Prac. & Rem. Code Sec. 7.002(b)

1. Depositories for Registry Funds

If a depository for registry funds has been selected under Subchapter B, Chapter 117, Local Government Code (hereinafter Subchapter B), a County Clerk who is to have for more than three days the legal custody of money deposited in the registry of the court pending the result of a legal proceeding shall deposit the money in the depository. The funds deposited shall be carried at the depository selected as a special account in the name of the Clerk making the deposit.

Local Gov't Code Sec. 117.052

The code does not require that the special account earn interest, but the Clerk may certainly elect to have the special account bear interest. If the Clerk wishes to have an interest-bearing account for registry funds, he or she must make a written request to the commissioners court. The bank at which the funds will be held in an interest-bearing account must file its application on or before the date set by the commissioners court. The application must be accompanied by a certified check or a cashier's check in an amount equal to one-half of one percent of the average daily balance of the registry funds held by the Clerk during the preceding year as determined by the County Clerk on or before the 10th day before the application is required to be filed.

Local Gov't Code Sec. 117.021

A Clerk is responsible for funds deposited into the registry fund from the following sources:

Local Gov't Code Sec. 117.112 Sec. 117.052(c)

- Funds of minors or incapacitated persons
- Funds tendered in an interpleader action

- Funds paid in satisfaction of a judgment
- Child support funds held more than three days
- Cash bonds
- Cash bail bonds
- Funds in an eminent domain proceeding
- Any other funds tendered to the Clerk for deposit into the registry of court

If a commissioners court selects a new depository under Subchapter B, when the depository qualifies, the County Clerk shall transfer the funds in a special account from the old depository to the new depository, and the Clerk may draw checks on the account(s) for this purpose.

Local Gov't Code Sec. 117.053(a)

Except as provided in the above paragraph, a County Clerk may not draw a check on special account funds held by a depository except to pay a person entitled to the funds. The payment must be made under an order of the court of proper jurisdiction in which the funds were deposited, except that an appeal bond shall be paid without a written order of the court on receipt of mandate or dismissal. Also, funds deposited under Section 887, Texas Probate Code, may be paid without a written order of the court. The Clerk shall place on the check the style and number of the proceeding in which the money was deposited with the Clerk.

Local Gov't Code Sec. 117.053(b)

In counties with a population of 190,000 or more, each check issued for the disbursement of funds must be issued in accordance with the laws providing for registry fund depositories. Each check must be signed according to procedure established by the county auditor before delivery or payments.

Local Gov't Code Sec. 117.058(c)

> *Neither the signature of the county treasurer nor that of the county auditor is required for the withdrawal of money from a trust fund account administered by a County Clerk pursuant to Chapter 117, Local Government Code. Money deposited with a court and administered by a County Clerk in a trust fund pursuant to Chapter 117, Local Government Code may be withdrawn only by a check drawn by the Clerk having custody by law of those funds, upon the order of the judge of the court in which the funds have been deposited.*

AG Op. JM-882 (1988)

The Clerk must transfer any registry funds into a separate account when directed to do so by a written order of a court. The separate account must be in one of the locations set out in Local Government Code Section 117.053(c).

Local Gov't Code Sec. 117.053(c)

A depository selected under Subchapter B shall pay a check drawn by a County Clerk against funds deposited in the Clerk's name on presentment of the check at the county seat if the funds subject to the check are in the possession of the depository. If the depository is not located at the county seat, the depository shall file a statement with the County Clerk of the county designating a place at the county seat where, and a person by whom, deposits by the Clerks will be received and checks drawn on the depository will be paid.

Local Gov't Code Sec. 117.056(a)

Local Gov't Code Sec. 117.056(b)

A County Clerk is not responsible for a loss of registry funds resulting from the failure or negligence of a depository. However, a County Clerk is not released from either:

Local Gov't Code Sec. 117.081(a)

- Liability for a loss of registry funds resulting from the Clerk's official misconduct, negligence, or misappropriation of the funds
- Responsibility for keeping the registry funds safe until the Clerk deposits them in a depository selected under Subchapter B

Local Gov't Code Sec. 117.081(b)

After a County Clerk deposits in a depository selected under Subchapter B, the registry funds held by the Clerk, the Clerk is relieved of the responsibility for keeping the funds secure.

Local Gov't Code Sec. 117.081(c)

If the commissioners court has not selected a depository under Subchapter B, a County Clerk holding money, an evidence of debt, an instrument of writing, or any other article deposited into the registry of the court pending the result of a legal proceeding must seal the article in a secure package and deposit the package in an iron safe or a bank vault.

Local Gov't Code Sec. 117.027

2. Trust Fund Accounts

a. Payment from Judgments

When a judgment is rendered, the judge may order that its payment be made into the registry of the court. This is to provide for a court record that proper payment has been made. Normally, as soon as the defendant pays the judgment, the plaintiff may immediately withdraw his funds.

Often, the defendant will wish to pay a judgment into the registry even though not ordered to do so. In this manner, the defendant will have such payment recorded in the registry as a receipt of compliance with the judgment.

In both cases, the Clerk merely sets up a ledger for the defendant's payment and clears the account when the plaintiff makes his withdrawal. The plaintiff's withdrawal must be accompanied by a court order authorizing such action.

b. Payment of Unclaimed Judgment

A judgment debtor may pay to the court that rendered the judgment the amount under the judgment owed to a judgment creditor whose location is unknown to the judgment debtor if the judgment debtor complies with Subsections (b) and (c), Section 31.008, Civil Practice and Remedies Code.

Civ. Prac. & Rem. Code Sec. 31.008(a)

- The payment must be made without offset or reduction for any claims of the judgment debtor.
- The judgment debtor shall prepare a recordable release of the judgment.
- The judge or Clerk of the court shall execute the release of the judgment on behalf of the creditor and issue the release to the debtor. The release shall recite the cause number, the court, the parties, the date of judgment, the amount of judgment, the amount paid into the court, and the date of the release.

Before being entitled to pay a judgment to a court under Section 31.008(a), Civil Practice Remedies Code, the judgment debtor shall send a letter notifying the judgment creditor of the judgment, by registered or certified mail, return receipt requested, to all of the following:

Civ. Prac. & Rem. Code Sec. 31.008(b)

- Judgment creditor's last known address
- Address appearing on the judgment creditor's pleadings or other court record, if different from the creditor's last known address
- Address of the judgment creditor's last attorney, as shown in the creditor's pleadings or other court record
- Address of the judgment creditor's last attorney, as shown in the records of the State Bar of Texas, if that address is different from the address shown in

the creditor's pleadings or other court record

Civ. Prac. & Rem. Code Sec. 31.008(c)

If the judgment creditor does not respond to a notice on or before the 15th day after the date on which the notice was sent, the judgment debtor may file an affidavit with the court stating that the judgment debtor has provided the required notice, that the judgment creditor has not responded to the notice, and that the location of the judgment creditor is not known to the judgment debtor.

Civ. Prac. & Rem. Code Sec. 31.008(d)

The court shall hold the amount paid to it by the judgment debtor under Section 31.008(a), Civil Practice and Remedies Code and interest earned on that amount in trust for the judgment creditor.

Civ. Prac. & Rem. Code Sec. 31.008(e)

The Clerk of the court shall deposit the trust funds and any interest earned by the funds in the Clerk's trust fund account.

The Clerk shall pay the funds and any interest earned by the funds to the judgment creditor or to the successors to the rights of the judgment creditor. The Clerk may presume that the funds are payable to the judgment creditor unless the Clerk is furnished with a written assignment of the judgment.

Civ. Prac. & Rem. Code Sec. 31.008(f)

Funds held in the Clerk's trust fund account in accordance with Section 31.008, Civil Practice and Remedies Code are subject to escheat under Chapter 72, Property Code.

Civ. Prac. & Rem. Code Sec. 31.008(g)

If the judgment creditor refuses to accept payment or refuses to file a release of judgment once payment has been received, the court shall set a hearing to determine if a release should be filed. If the court finds that the amount under judgment has been paid into the registry of court and that the judgment creditor has accepted payment and refused to file a release, the court may order the judgment debtor to prepare and filed a recordable release with the Clerk of court.

AG Op. DM-174 (1992)

> *The County Clerk may not charge a filing fee for the rendition of clerical services in connection with the execution or preparation of a release of judgment pursuant to Section 31.008 of the Civil Practices and Remedies Code. Section 31.008 neither requires nor prohibits the filing of the release of judgment in the court file for the particular case. The county is entitled to the fee authorized by Section 117.055 of the Local Government Code for accounting and administrative expenses incurred in handling funds deposited in the County Clerk's trust fund pursuant to Section 31.008. It may not collect the fee at the time the funds are paid to the court.*

c. Investment Trusts

Prop. Code Sec. 142.004

If the recipient of the judgment is a minor child or an incapacitated person, the judge may order all funds paid into the registry for the Clerk to administer. In such cases, the funds may be invested by the Clerk, on written order of the court, only in the locations specified in Sec. 142.004 of the Property Code. Interest earned on such funds must be paid in the same manner as interest earned on a registry account under Chapter 117, Local Government Code.

Prop. Code Sec. 142.008 and 142.009

The court may also order a structured settlement for a minor or an incapacitated person who has no legal guardian and is represented by a next friend or an appointed guardian ad litem. It is the responsibility of the person obligated to fund the settlement to provide the necessary documents to the court. The Clerk should be familiar with the

requirements for structured settlements and the special requirements for structured settlements funded by annuity contracts.

d. Specific Performance Bonds

Gov't Code Sec. 2253.001

Fam. Code Sec. 157.109 Sec. 157.110

The forfeiture of court-ordered specific performance bonds is paid into the registry. The proceeds from such payment may be withdrawn by the damaged party upon court order. Specific performance bonds may be ordered in a number of different circumstances. One example is contained in Government Code Section 2253.001. Another example is contained in Family Code Sections 157.109 and 157.110.

e. Proceeds from Executions

TRCP Rule 712

The officer making the sale must return the order to the court from which it issued, along with the proceeds, within five days. The funds are paid to the Clerk of the court for deposit into the court's registry.

3. Hot Checks

Local Gov't Code Sec. 118.011(b)

Local Gov't Code Sec. 118.0215

A County Clerk may set and collect a fee of between $15.00 and $30.00 from any person for a check that is presented to the Clerk in payment of taxes or any other item the person owes to the county and is returned by the depository bank or any other financial institution because of:

- Insufficient funds to cover the check
- Closed account
- Unauthorized signature
- Check drawn on uncollected funds
- Any other reason considered to be the fault of the drawer

4. Collection Made by One Officer on Behalf of Another

Local Gov't Code Sec. 113.903(a)

With the prior consent of the commissioners court and the officer to whom funds are owed, a County Clerk may receive or collect, on behalf of another district, county or precinct officer, money or property owed to the county.

Local Gov't Code Sec. 113.903(b)

If a County Clerk collects money under Section 113.903 of the Local Government Code, the Clerk must deposit the money in accordance with Section 113.022, Local Government Code.

Local Gov't Code Sec. 113.903(c)

When the County Clerk reports or deposits the collection, the Clerk shall file with the report or deposit a statement containing the information listed in Section 113.903(c), Local Government Code.

Local Gov't code Sec. 113.903(d)

The county auditor, or the County Clerk if there is no county auditor, and the county treasurer shall attribute money or property received or collected under Section 113.903 of the Local Government Code to the account of the officer on whose behalf it is received or collected.

Local Gov't Code Sec. 113.903(e)

A person who accepts a payment under the terms of Section 113.903 of the Local Government Code shall issue a receipt for any money received to the payer of the debt.

D. PAYMENTS TO COUNTY TREASURER

Local Gov't Code Sec. 113.022

A county official's failure to deposit county funds with the county treasurer within

five (5) business days of the receipt of such funds is a violation of the official's statutory duty. In a county with fewer than 50,000 inhabitants, the commissioners court may extend the period during which funds must be deposited with the county treasurer, but the period may not exceed 15 days after the date the funds are received.

AG Op. JM-397 (1985)
AG Op. JC-0031 (1999)

All county funds are to be deposited in the county depository duly designated by the commissioners court.

Local Gov't Code Sec. 116.113
AG Op. JM-383 (1985)
AG Op. JM-832 (1987)
AG Op. JM-928 (1988)

E. JURY SELECTION

Petit juries may decide both criminal cases and civil cases. It is usually assumed that a jury will be necessary in criminal cases unless the defendant specifically waives this right. In civil cases, however, one of the parties to the case must specifically request a jury trial.

1. Compiling the List of Potential Jurors for the Jury Wheel

The jury wheel must be reconstituted by using, as the sources:

- Names of all persons on the current voter registration lists from all the precincts in the county, and
- All names on a current list to be furnished by the Department of Public Safety, showing the citizens of the county who hold either a valid Texas driver's license or a valid personal identification card or certificate issued by the department and who are not disqualified from jury service because of age, citizenship, or prior felony conviction

Gov't Code 62.001(a)

If a written summons for jury service is returned with a notation from the U.S. Postal Service of a change of address, the Clerk updates the jury wheel card to reflect the person's new address.

Gov't Code Sec. 62.001(k) Sec. 62.0146

Each year, not later than the third Tuesday in November or the date provided by Section 16.032, Election Code, for the cancellation of voter registrations, whichever is earlier, the voter registrar of each county shall furnish to the secretary of state a current voter registration list from all the precincts in the county. This list may exclude, at the option of the voter registrar, the names of persons on the suspense list maintained under Section 15.081, Election Code.

Gov't Code Sec. 62.001(c) Sec. 62.001(d)

The Clerk shall maintain a list of persons excused or disqualified from jury service because of non-residence in the county. On the third business day of each month, the Clerk shall provide the list to the voter registrar. The voter registrar shall notify each person on the list that he or she is being placed on the county's suspense list of registered voters because of exemption or disqualification for jury service based on non-residence in the county. The voter registrar's notice must include information describing how the person may be removed from the suspense list and restored to regular voter registration in the county.

Gov't Code Sec. 62.114

On or before the first Monday in October of each year, the Department of Public Safety shall furnish its list to the Secretary of State.

Gov't Code Sec. 62.001(f)

The Secretary of State combines the voter registrar list with the Department of Public Safety list, eliminates duplicate names, and sends the combined list to each county on or before December 31 of each year or as may be required under a plan developed in accordance with Section 62.011, *Electronic of Mechanical Method of Selection*, Government Code. The District Clerk of a county that has adopted a plan under Section 62.011 shall give the Secretary of State notice not later than the 90th day before the date the list is required. The list furnished to the county must be in a format, electronic or printed copy, as requested by the county and must be certified by the Secretary of State that the list contains the names required by law, eliminating duplications. The Secretary of State furnishes the list free of charge.

Gov't Code Sec. 62.001(g)

If the Secretary of State is unable to provide the list because of the failure of the voter registrar to furnish the county voter registration list to the Secretary of State, the county tax assessor-collector, sheriff, County Clerk, and District Clerk in the county shall meet at the county courthouse between January 1 and January 15 of the following year and reconstitute the jury wheel for the county, except as provided under a plan adopted under Section 62.011, Government Code. The deadlines included in the plan control the preparation of the list and the reconstituting of the wheel. The Secretary of State shall send the list furnished by the Department of Public Safety to the voter registrar, who combines the lists for use as the juror source and certify the combined list as required of the Secretary of State.

Gov't Code Sec. 62.001(h)

The commissioners court may, instead of using the method provided by Subsections (c) through (h), Section 62.001, Government Code, contract with another governmental unity or a private person to combine the voter registration list with the list furnished by the Department of Public Safety.

Gov't Code Sec. 62.001(i)

In a county with a population of 250,000 or more, the names of persons who are summoned for jury service in the county and who appear for service must be removed from the jury wheel and may not be maintained in the jury wheel until the third anniversary of the date the person appeared for service or until the next date the jury wheel is reconstituted, whichever date occurs earlier. This subsection applies regardless of whether the person served on a jury as a result of the summons.

Gov't Code Sec. 62.001(j)

When the jury wheel is reconstituted, the names should be transferred to small cards and placed in the jury wheel. In most counties, the computer services bureau that prints the voter registration list will also print the jury wheel cards. Otherwise, the Clerk must manually prepare the cards. Many larger counties have discontinued the use of the jury wheel and instead keep the jury pool on a computer storage device. In counties using computerized jury selection, a plan may be prepared either for the use of the same list for the selection of persons for jury service until the list is exhausted or for the use of the same list for a specific period of time.

Gov't Code Sec. 62.002 Sec. 62.003 Sec. 62.011(b)(5)

If a written summons for jury service sent by a sheriff, constable or bailiff is undeliverable, the Clerk may remove from the jury wheel the card for the person summoned or remove the person's name from the record of names for selection of persons for jury service. If a written summons for jury service sent by a sheriff, constable or bailiff is returned with forwarding information by the United States Postal Service, the Clerk may update the jury wheel card to reflect the person's new address. When the jury wheel is reconstituted, the cards shall reflect the updated address.

Gov't Code Sec. 62.0145 Sec. 62.0146 Sec. 62.001(k)

2. Selection of Jurors

One duty of the County Clerk in many counties is the summoning of jurors. The procedure for summoning jurors is as follows:

- The Clerk determines how many jurors must be summoned initially to meet jury requirements.
- In counties using the jury wheel, the County Clerk and the sheriff shall draw the appropriate number of names from the wheel in the presence and under the direction of the judge.

  Gov't Code Sec. 62.004(a)
- In counties using electronic or mechanical equipment for jury selection, the appropriate number of names are drawn by a random and impartial selection process.

  Gov't Code Sec. 62.011

  Martinez v. State, 507 S.W.2d 223, 226-227 (Tex. Crim. App. 1974)
- The County Clerk prepares a list of jurors selected (Form X-1) and seals it in an envelope until the judge notifies the Clerk of the date the prospective jurors are to be summoned. Upon such notification (which should be a reasonable time before the jurors are to be summoned), the Clerk immediately notes on the list the date the jurors are to be summoned and delivers the list to the sheriff. The sheriff then immediately notifies the jurors on the list to appeal for jury service on the date designated by the judge.

  Gov't Code Sec. 62.004 Sec. 62.006 Sec. 62.007 Sec. 62.008 Sec. 62.012 Sec. 62.013
- In counties with a single district court and a single county court at law with concurrent jurisdiction, the judges may agree to a general panel of jurors for service in both courts. The names are drawn from the jury wheel, either weekly or in advance as determined by the judges. The sheriff notifies persons whose names are drawn to appear before then district judge for jury service. Once impaneled, the jurors constitute a general panel and may be used interchangeably by both courts. General panels with interchangeable jurors may not be used in a capital case or a mental health commitment case.

  Gov't Code Sec. 62.0175

  NOTE: *Prospective jurors may not be summoned to appear for jury service on the date of the general election for state and county officers.*

  Gov't Code Sec. 62.015

A person is qualified to serve as a juror if he or she meets all of the following requirements:

Gov't Code Sec. 62.102

- Is at least 18 years of age
- Is a citizen of Texas and a resident of the county in which he or she is to serve as a juror
- Is qualified under the Constitution and laws to vote in the county in which he or she is to serve as a juror. (Note: the person does not have to be registered to vote in order to be "qualified" to vote.)
- Is of sound mind and good moral character
- Is able to read and write
- Has not served as a juror for six days during the preceding three months in the county court or during the preceding six months in the district court
- Has not been convicted of, or be under indictment for, misdemeanor theft or a felony

3. Exemptions from Jury Service – Names Removed from Jury Wheel

Gov't Code Sec. 62.106

A person qualified to serve may establish an exemption from jury service if the person meets one of the following requirements:

- Is over 70 years of age
- Has legal custody of a child under the age of 12 years if jury service by that person would necessitate leaving the child without adequate supervision
- Is a student at a public or private high school
- Is enrolled and in actual attendance at an institution of higher education
- Is summoned for service in a county with a population of at least 200,000 and has served as a petit juror during the preceding 24-month period (or the period of time specified in a plan for the electronic selection of jurors under Section 62.011, Government Code)
- Is an officer or an employee of the Senate, the House of Representatives, or any department, commission, board, office, or other agency in the legislative branch of state government
- Is the primary caretaker of a person who is an invalid unable to care for himself or herself (This exemption does not apply to health care workers.)
- Is summoned for service in a county with a population of at least 250,000 and the person has served as a petit juror in the county during the three-year period preceding the date the person is to appear for jury service (This exemption does not apply if the jury wheel in the county has been reconstituted after the date the person served as a petit juror.)
- Is a member of the United States military forces serving on active duty and deployed to a location away from the person's home station and out of the person's county of residence

Gov't Code Sec. 62.107

A person may claim an exemption from jury service under Section 62.106, Government Code, by filing with the sheriff, voter registrar, or District or County Clerk of the county of the person's residence a sworn statement that sets forth the ground of and claims the exemption. The name of the person who claims an exemption by filing the sworn statement may not be placed in the jury wheel for the ensuring year.

Gov't Code Sec. 62.107 Sec. 62.108

A person who is over 70 years of age may establish a permanent exemption by furnishing a signed statement to the Clerk of the court. A person summoned for jury service who files a statement with the court Clerk under Section 62.107 of the Government Code claiming an exemption from jury service on the ground of being over 70 years of age may claim the permanent exemption by including in the statement a declaration that he or she desires a permanent exemption. Promptly after a statement claiming a permanent exemption is filed, the Clerk shall have a copy delivered to the voter registrar of the county and the name of the person claiming such exemption will be removed from the jury wheel. A person may claim a permanent exemption by filing with the voter registrar of the county, by mail or personal delivery, a signed statement affirming that the person is over 70 years of age and desires a permanent exemption on that ground. The voter registrar of the county is now required to maintain a current register indicating the name of each person who has claimed and is entitled to a permanent exemption from jury service because the person is over 70 years of age.

The judge of a district court may, by order, permanently or for a specified period exempt from jury service a person with a physical or mental impairment or with an inability to comprehend or communicate the English language. A person requesting an exemption must submit an affidavit to the court that states the person's name and address along with the reason for and duration of the requested exemption. If the person is requesting an exemption due to physical or mental impairment, the person must attach a statement from a physician to the affidavit. Three separate affidavit forms are included in these materials.

Gov't Code Sec. 62.109

Form X-2 Request for Exemption due to Physical Impairment
Form X-3 Request for Exemption due to Mental Impairment
Form X-4 Request for Exemption due to English Language Inability

Promptly upon receipt of an order from the district judge exempting such person (Form X-5), the District Clerk must notify the county tax assessor-collector of the name and address of such person so exempted and the duration of the exemption. The person so exempted will not be summoned for jury service during the period for which he or she is exempted and the name of the personal will not be placed in the jury wheel or otherwise used in preparing the record of names from which a jury list is selected, during the period for which the person is exempted.

4. Postponement of Jury Service

A court may hear any reasonable sworn excuse, including any claim of exemption or lack of qualification, of a prospective juror and release him or her entirely or until a later time. A form for a juror to request a postponement of jury service (Form X-6) is included in these materials.

Gov't Code Sec. 62.110

A person summoned for jury service may request a postponement of his or her initial appearance for jury service. The person summoned requests the postponement by contacting the Clerk of the court in person, in writing or by telephone, before the appearance date. The Clerk shall grant the postponement if no other postponement has been granted during the year preceding the appearance date AND a substitute date for appearance, within six months of the original appearance date, is set.

Gov't Code Sec. 62.0143 (a) and (b)

A subsequent postponement may be requested, but will be granted only in the event of an unanticipated, extreme emergency (*e.g.*, a death in the family, sudden serious illness suffered by the person, a natural disaster or national emergency in which the person is personally involved). A substitute appearance date within six months must be determined before a second postponement will be granted.

Gov't Code Sec. 62.014 3(c)

5. Mandatory Model Jury Summons/Questionnaire Promulgated

The Office of Court Administration (OCA) has developed a model for a uniform written jury summons and questionnaire to accompany the written jury summons. OCA's model summons and questionnaire may be found at http://www.txcourts.gov/media/517192/MJS_Form.pdf. Each county is required to conform its summons to the model developed by OCA and to include the questionnaire with each summons. H.B. 174 (82nd Legislature) now requires that the questionnaire also notify a person that if the person states that the person is not a citizen, the person will no longer be eligible to vote if the person fails to provide proof of citizenship.

Gov't Code Sec. 62.0131 Sec. 62.0132

The model developed by OCA allows a person to claim an exemption by signing a statement and returning it to the Clerk of court. OCA's form contains the required language notifying the person that he or she may no longer be eligible to vote in the county if he or

Gov't Code Sec. 62.0142

she claims exemption because of lack of citizenship or county residence. The form must notify the person that by claiming a disqualification or exemption based on the lack of citizenship, the person will no longer be eligible to vote if the person fails to provide proof of citizenship

6. Selection of Jury Panel

Gov't Code Sec. 62.015

On the day that jurors appear for jury service in court, the judge, if jury trials have been set, will select from the names on the jury lists a sufficient number of qualified jurors to serve on the jury panel. If the court at any time does not have a sufficient number of prospective jurors present whose names are on the jury lists and who are not excused by the judge from jury service, the judge shall order the sheriff or constable to summon additional prospective jurors to provide the requisite number of jurors for the panel. The names of additional jurors to be summoned by the sheriff or constable to fill a jury panel shall be drawn from the jury wheel under the orders of the judge. Additional jurors summoned to fill a jury panel shall be discharged when their services are no longer required. The judge may order all or part of a panel of jurors to stand adjourned from jury service until a subsequent date in the term, but a juror will not be paid for the time that he stands adjourned from jury service. When impaneling the jury, the following procedures are required:

- All jurors summoned are gathered in the court or jury room for examination by the judge and the granting of excuses, including exemptions and disqualifications, from jury duty. *Gov't Code Sec. 62.110*
- The Clerk brings the jury cards (or a list of petit jurors) drawn from the wheel to the court or jury room and removes the names of absent jurors and those excused, exempted or disqualified from duty. *CCP Art. 35.03* *Gov't Code Sec. 62.110*
- The Clerk shall randomly select the jurors by a computer or other process of random selection and shall write or print the names, in the order selected, on the jury list. A copy of each jury list will be prepared for the parties (Form X-7 and Form X-8). In addition to the jurors' names, the list should contain the file number of the case and the style of the case. The Clerk shall deliver a copy of the list to the State's counsel and to the defendant or his attorney. *CCP Art. 35.11* *TRCP 224*
- Before the parties or their attorneys begin examination of the jurors whose names have so far been listed, the jurors on the panel shall be given the following oath:

Civil Cases: *TRCP 226*

> "You, and each of you, do solemnly swear that you will true answers give to all questions propounded to you concerning your qualifications as a juror, so help you God."

Criminal Cases: *CCP Art. 35.02*

> "You, and each of you, solemnly swear that you will make true answers to such questions as may be propounded to you by the court, or under its directions, touching your service and qualifications as a juror, so help you God."

- The final jury list will consist of the first six (or more, if alternate jurors are chosen), names on the jury list to survive challenges by the judge and attorneys. This final list is filed in the case file folder as a part of the *Art. 35.26* *TRCP 234*

permanent record. (Form X-9)

- The six jurors are officially impaneled when either the Clerk or the judge administers the following jurors' oath:

Civil Cases: *TRCP 236*

> "You, and each of you, do solemnly swear that in all cases between parties which shall be to you submitted, you will a true verdict render, according to the law, as it may be given you in charge by the court, and to the evidence submitted to you under the rulings of the court. So help you God."

Criminal Cases: *CCP Art. 35.22*

> "You and each of you do solemnly swear that in the case of the State of Texas against the defendant, you will a true verdict render according to the law and the evidence, so help you God."

- A juror may be removed from a jury panel for cause or by peremptory challenge, and subsequently placed on another jury panel, except in counties having a population of 2,000,000 or more, in which case the juror must be dismissed. Upon dismissal, the juror should be paid and released. *Gov't Code Sec. 62.021*

7. Juror Reimbursement

The rate of reimbursement for travel and other expenses for petit jurors is not less than $6 for the first day or fraction of a first day, and not less than the amount set as state reimbursement to the county ($34 current amount) for each day or fraction of a day thereafter. (The term "petit juror" refers to those jurors who are actually selected to hear the trial of a case.) Prospective jurors (those who are excused after being examined in voir dire) are entitled to receive not less than $6.00 for the first day, nor more than the amount set as state reimbursement to the county ($34 current amount) for each day or fraction of a day thereafter spent in court. The commissioners court sets the rates for both petit jurors and prospective jurors, in accordance with the statutory minimums. *Gov't Code Sec. 61.001 SB 1 82nd Legislature Note: the $28 amount may be changed.*

In a specific case, the presiding judge, with the agreement of the parties involved or their attorneys, may increase the daily reimbursement for jurors in that case. The difference between the usual daily reimbursement and the reimbursement for jurors in a specific case shall be paid, in equal amounts, by the parties involved in the case. It is necessary to record the amount paid to each juror. *Gov't Code Sec. 61.001(d)*

The state reimburses counties $28 (current amount) of the fee paid to jurors for each day following the first day. The commissioners court of a county entitled to this reimbursement may file a claim for reimbursement with the Comptroller. *Gov't Code Sec. 61.0015*

If a check, instrument, or other method of payment authorized under Section 113.048, Local Government Code, representing a reimbursement of expenses for a juror is not presented for payment or redeemed before the 90th day after it is issued: *Gov't Code Sec. 61.001(f)*

- The instrument or other method of payment is considered forfeited and void.
- The money represented by the instrument or other method of payment may be placed or retained in the county's jury fund, the county's general fund, or

any other fund in which county funds can be legally placed, at the discretion of the commissioners court.

8. Donation of Juror Pay

Gov't Code Sec. 61.003

Each prospective juror reporting for jury service will be personally provided a form letter which contains a brief description of the programs designated for donation. This letter when signed by the prospective juror directs the county treasurer to donate all or a specific amount of the prospective juror's reimbursement for jury service to one of the entities described below. A county that has adopted a system or method of payment authorized by Section 113.048, Local Government code, may provide a person who reports for jury service in the county an opportunity to donate all, or a specific part designated by the juror, of the juror's daily reimbursement by completing a self-executing application on a form prescribed by the commissioners court.

- The compensation to victims of crime fund under Subchapter B, Chapter 56, Code of Criminal Procedure
- The child welfare board, child protective services, or child services board of the county appointed under Section 264.005, Family Code, that serves abused and neglected children
- Any program selected by the commissioners court that is operated by a public or private nonprofit organization and that provides shelter and services to victims of family violence
- Any other program approved by the commissioners court of the county, including a program established under Article 56.04(f), Code of Criminal Procedure, that offers psychological counseling to jurors in criminal cases involving graphic evidence or testimony

Additionally, the county treasurer or a designated county employee will collect each form letter directing the county treasurer to donate a prospective juror's reimbursement for jury service.

A sample "Juror Donation Form" (Form X-10) is in the Forms Section.

9. Removing Names from the Jury Wheel

Elec. Code Sec. 11.002

Those persons convicted of a felony and those found to be of unsound mind in probate court should have their names removed from the list of qualified voters and thereby from the jury pool or wheel. (A person convicted of a felony may be eligible to vote after he or she has finally discharged the sentence, completed court-ordered probation, or has been pardoned or otherwise released from the resulting disability to vote.)

Gov't Code Sec. 62.001(b) Sec. 62.107 Sec. 62.108

Those persons over 70 years of age who have filed a statement claiming a permanent exemption from jury duty should have their names removed from the jury wheel.

Gov't Code Sec. 62.001(b) Sec. 62.109

Additionally, those persons who, by order of the court, have been permanently or for a specified period excused from jury duty for physical or mental impairment or inability to communicate in the English language, should have their names removed from the jury wheel or otherwise not used in preparing the record of names from which a jury list is selected. (See "Exemption from Jury Service" in this chapter.)

Gov't Code Sec. 62.0142

Also, those persons who claim exemption from jury service based on lack of

citizenship or county residence may be ineligible to vote, and thus no longer eligible to serve as jurors.

Elec. Code Sec. 11.002

Finally, those persons whose summons has been returned as undeliverable may be removed from the jury wheel, provided the Clerk has not received any forwarding information from the United States Postal Service.

Gov't Code Sec. 62.0145 Sec. 62.0146

10. Excuse of Jurors

Generally, the court hears and determines excuses offered for not serving as a juror, including any claim for exemption or lack of qualification. However, under a plan approved by the commissioners court in the same manner as a plan approved for jury selection by electronic or mechanical method, in a case other than capital felony case, a designee of the court (typically the Clerk) may hear and determine an excuse offered for not serving as a juror. If the court's designee considers the excuse sufficient, he or she may discharge the prospective juror or postpone the juror's service. The prospective juror may also be discharged or have service postponed if he or she submits a statement to the court's designee of the grounds for exemption or disqualification.

CCP Art. 35.03

In this regard, the Government Code provides that the court's designee may hear any reasonable sworn excuse of a prospective juror, including a claim for exemption or lack of qualification. The court's designee may discharge a prospective juror or release him or her from jury service until another day of the term.

Gov't Code Sec. 62.110

If a prospective juror is required to appear at a court proceeding on a religious holy day observed by the prospective juror, the court or the court's designee will release the prospective juror from jury service entirely or until another day of the term.

Gov't Code Sec. 62.112

11. Computer or Telephone Response to Jury Summons

a. A plan authorized under Section 62.011 for the selection of names of prospective jurors by electronic or mechanical means may allow for a prospective juror to appear in response to a summons by any of these methods:

Gov't Code Sec. 62.0111

1. Contacting the county officer responsible for summoning jurors by computer
2. Calling an automated telephone system
3. Appearing before the court in person

b. A plan authorized under Section 62.011 may also allow for a prospective juror to provide information to the county officer responsible for summoning jurors or for the county officer to provide information to the prospective juror by computer or automated telephone system, including:

1. Information that permits the court to determine whether the prospective juror is qualified for jury service under Section 62.102
2. Information that permits the court to determine whether the prospective juror is exempt from jury service under Section 62.106
3. Submission of a request by the prospective juror for a postponement or excuse from jury service under Section 62.110
4. Information for jury assignment under Section 62.016, including:

A. Prospective juror's postponement status
B. If the prospective juror could potentially serve on a jury in a justice court, the residency of the prospective juror
C. If the prospective juror could potentially serve on a jury in a criminal matter, whether the prospective juror has been convicted of a misdemeanor theft

5. Completion and submission by the prospective juror of the written jury summons questionnaire under Section 62.0132
6. Prospective juror's electronic mail address
7. Notification to the prospective juror by electronic mail of:
   A. Whether the prospective juror is qualified for jury service
   B. Status of the exemption, postponement, or judicial excuse request of the prospective juror
   C. Whether the prospective juror has been assigned to a jury panel

c. The county officer responsible for summoning jurors must purge the electronic mail address of a prospective juror collected under Subsection (b):
   1. If the prospective juror serves on a jury, not later than the 30th day after the date that:
      A. The county sends the person payment for jury service, or
      B. The county would otherwise send the person payment for jury service, if the person has donated the payment under Section 61.003, or
   2. If the prospective juror does not serve on a jury, not later than the 30th day after the date that the court releases the person from jury service.

12. Personal Information About Jurors in Criminal Trials

CCP Art. 35.29

SB 270 (83rd Leg.)

Information collected by the court or by a prosecuting attorney during the jury selection process about a person who serves as a juror, including the juror's home address, home telephone number, social security number, driver's license number, and other person information, is confidential and may not be disclosed by the court, the prosecuting attorney, the defense counsel, or any court personnel except on application by a party in the trial or on application by a bona fide member of the news media acting in such capacity to the court in which the person is serving or did serve as a juror. On a showing of good cause, the court shall permit disclosure of the information sought. In 2013, Senate Bill 270 amended the Code of Criminal Procedure to provide an exception to the prohibition against releasing personal information about a juror collected during the jury selection process. The law now authorizes a defense counsel to disclose that information to successor counsel representing the same defendant in a habeas corpus proceeding in a death penalty case without application to the court or a showing of good cause.

13. Jury Fees

Gov't Code Sec. 51.604

TRCP 216

The Clerk of a county court or statutory county court must collect a $22.00 jury fee for each civil case in which a person requests a jury trial. The $22.00 fee includes the $5.00 jury fee required by Texas Rule of Civil Procedure 216. At least $5.00 of the fee must be

paid not less than 30 days before the date set for trial; the remaining $17.00 must be paid no later than 10 days before trial is scheduled.

14. Uniform Jury Handbook

The State Bar of Texas publishes a uniform jury handbook that: *Gov't. Code Sec. 23.202(a)*

- Informs jurors in lay terminology of the duties and responsibilities of a juror
- Explains basic trial procedures and legal terminology
- Provides other practical information relating to jury service

The State Bar shall review and update the uniform jury handbook annually. A Spanish language version of the handbook is published and made available. *Gov't Code Sec. 23.202(b)*

The State Bar shall distribute copies of the uniform jury handbook to each trial court of this State in sufficient numbers to meet the requirements of this subchapter. *Gov't Code Sec. 23.203(a)*

The Clerk of a trial court shall provide each juror in a civil or criminal case with a copy of the uniform jury handbook, which the juror shall read before beginning jury service. *Gov't Code Sec. 23.203(b)*

The handbook is a public document. The State Bar or trial court may distribute the handbook to promote the public's understanding of jury service. *Gov't Code Sec. 23.203(c)*

The handbook may be viewed on the State Bar's website: http://www.texasbar.com/AM/Template.cfm?Section=Jury_Information&Template=/CM/ContentDisplay.cfm&ContentID=23549 or a copy of the publication may be obtained by calling the State Bar at 800/204-2222, x 2610.

F. LIQUOR LICENSES - TEXAS ALCOHOLIC BEVERAGE COMMISSION

The Election Code instructs the registrar of voters to verify the signatures appearing on a petition calling for a local option election to legalize (or to prohibit) the sale of alcoholic beverages. The code sets forth the following requirements: *Elec. Code Sec. 501.031*

- The registrar of voters of the county shall check the names of the signers of petitions and the voting precincts in which they reside to determine whether the signers of the petition were qualified voters of the county, justice precincts, or incorporated city or town at the time the petition was issued. The political subdivision may use a statistical sampling method to verify the signatures. On written request from a citizen in the political subdivision for which an election is sought, the political subdivision shall verify each signature on the petition. The citizen making the request shall pay the reasonable cost of the verification. The registrar shall certify to the commissioners court the number of qualified voters signing the petition.
- A petition may not be counted unless the signature is the actual signature of the purported signer and the petition:
- Contains, in addition to the signature:
  - Signer's printed name
  - Signer's date of birth
  - If the territory from which the signatures must be obtained is situated in more than one county, the county of registration

- Signer's residence address
- Date of signing

- Complies with any other applicable requirements prescribed by law.

Elec. Code Sec. 12.001 Sec. 12.031

The county tax assessor-collector is the voter registrar for the county unless the position of county elections administrator is created or the County Clerk is designated as the voter registrar. The commissioners court may designate the County Clerk as the county's voter registrar if the Clerk and the tax assessor-collector agree.

Elec. Code Sec. 501.153

The County Clerk shall certify the results of any local option election to the secretary of state and the Texas Alcoholic Beverage Commission at Austin, Texas, within three (3) days after the commissioners court of such county has declared the results thereof, free of charge.

On August 1 of each year, it is the duty of each County Clerk to report to the Texas Alcoholic Beverage Commission at Austin, Texas, the exact status as to wet and dry areas of his or her county, specifying the status of the county as a whole and of each incorporated city or town in each justice precinct of said county. Such information will be furnished to the commission free of charge.

Alco. Bev. Code Sec. 11.37

HB 1959 82nd Legislature

The County Clerk of the county in which an application for a license or permit is made shall certify whether the location or address given in the application is in a wet area and whether the sale of alcoholic beverages for which the license or permit is sought is prohibited by any valid order of the county commissioners court. HB 1959 amended the Alcoholic Beverage Code to entitle an applicant for a permit or license for the sale of alcoholic beverages to a hearing before the county judge to contest the certification by the County Clerk that the location or address given in the application is not in a wet area. The applicant may also challenge the refusal to issue the certification.

Alco. Bev. Code Sec. 11.37

HB 1959 82nd Legislature

The city secretary or Clerk of the city in which an application for a license or permit is made must certify whether the location or address given in the application is in a wet area and whether the sale of alcoholic beverages for which the license or permit is sought is prohibited by charter, ordinance or any amendment thereto. HB 1959 entitles an applicant for a permit or license for the sale of alcoholic beverages to a hearing before the county judge to contest the certification or refusal to issue the certification by a city secretary or Clerk of the city in which the application is made.

Most of the time if the location is within the city limits, the signature of the city secretary or Clerk is already affixed when it arrives in the County Clerk's office.

In 2013 two bills made significant changes to the Alcoholic Beverage Code. Senate Bill 1035 makes amendments relating to alcoholic beverage license applications and fees. Senate Bill 1090 makes amendments relating to the manufacture, distribution, sale, and provision of alcoholic beverages and the regulation of those activities.

Alco. Bev. Code Sec. 61.31(a) and (b)

SB 1035 (83rd Leg.)

The application of any person desiring to be licensed to manufacture, distribute, store, or sell beer shall be filed with the commission on forms prescribed by the commission. On receipt of an application, the commission or administrator shall determine whether a protest has been filed against the application. If a protest against the application has been filed, the commission or administrator shall investigate the protest. If the commission or administrator finds that no reasonable grounds exist for the protest, or if no protest has been filed, the commission or administrator shall issue a license if the commission or administrator finds that all facts stated in the application are true and no legal ground to

refuse a license exists. If the commission or administrator finds that reasonable grounds exist for the protest, the commission or administrator shall reject the protested application and require the applicant to file the application with the county judge of the county in which the applicant desires to conduct business and submit to a hearing. The county judge shall set the hearing on the protested application on a date not less than five (5) nor more than ten (10) days after the date the county judge receives the protested application.

Alco. Bev. Code Sec. 61.31(c)
SB 1035 (83rd Leg.)

Each applicant for an original license, other than a branch or temporary license, shall pay a hearing fee of $25 to the County Clerk at the time of the hearing.

Alco. Bev. Code Sec. 61.311

The county judge of a county with a population of 1.3 million or more may appoint a master to hear an application under this chapter. The master transmits his/her findings to the judge at the conclusion of the hearing. The judge may then adopt, modify, correct, reject, reverse, or recommit for further information the master's report. An applicant is entitled to a hearing before a judge, and the master shall inform each applicant of that right in writing and provide each applicant a copy of the master's findings. The request for a hearing before a judge must be filed no later than three days after the applicant receives the master's findings.

Alco. Bev. Code Sec. 61.312

The county judge of any county may file an order with the commissioners court of that county delegating the duty to hear applications under this chapter to another county officer, including a judge of a statutory county court.

Alco. Bev. Code Sec. 61.38(a)

SB 1035 (83rd leg.)

SB 1090 (83rd Leg.)

In 2013, Senate Bill 1035 and Senate Bill 1090 amended Section 61.38. These amendments require every original applicant for a license to manufacture, distribute, or sell beer at retail to give notice of the application by electronic or nonelectronic publication at the applicant's own expense in two consecutive issues of a newspaper of general circulation published in the city or town in which the applicant's place of business is located; requires that the notice, if no newspaper is published in that city or town, be published in a newspaper of general circulation published in the county where the applicant's business is located; requires that the notice, if no newspaper, rather than a newspaper of general circulation, is published in that county, be published in a qualified newspaper published in the closest neighboring county and circulated where the applicant's business is located; deletes existing text requiring the county clerk, when an application for a license to manufacture or distribute beer is filed, to post at the court house door a written notice containing the substance of the application and the date set for hearing; deletes existing Subsection (b); deletes existing Subsection (c); and provides that an applicant for a renewal license is not required to publish notice.

Alco. Bev. Code Sec. 61.38(b) and (c) ***deleted***

Alco. Bev. Code Sec. 61.382

An applicant for a license authorizing the retail sale of beer for on-premise consumption shall give written notice of the application to each residential address and established neighborhood association located within 300 feet of any property line of the premises for which the license is sought. The notice is not required if the application contains an application for a food and beverage certificate.

Alco. Bev. Code Sec. 101.09

The Clerk shall furnish the commission, on request, a certified copy of the judgment of conviction and of the information against a person convicted of a violation of the Alcoholic Beverage Code. The Clerk cannot charge a fee for furnishing the copy.

G. BINGO ENABLING ACT

The Bingo Enabling Act provides instructions for holding elections to allow or prohibit bingo in a political subdivision.

For bingo to become legal in a political subdivision, it must be affirmatively voted in. The governing body of a county, justice precinct or municipality shall order and hold a bingo election if it is presented with a petition for such election that meets the requirements outlined below. (Although not required by statute, the governing body may wish to furnish standardized, bilingual petitions to petitioners to ensure compliance with the Federal Voting Rights Act.) The governing body may also order and hold an election on its own motion.

Occ. Code Sec. 2001.657(b) Sec. 2001.651

The governing body for a county or justice precinct is the commissioners court. The governing body for a municipality is the city council or other chief legislative body.

Occ. Code Sec. 2001.002(12)

The Bingo Enabling Act requires the following to appear in a petition to legalize (or prohibit) bingo:

Occ. Code Sec. 2001.652

- Statement preceding the space reserved for signatures on **each page** reading as follows: "This petition is to require that an election be held in (name of political subdivision) to legalize (or prohibit) bingo games authorized under the Bingo Enabling Act"

Occ. Code Sec. 2001.652(a) and (b)

- Signature of the signer and the date on which the signer signed the petition. A signature may **not** be counted if the signer fails to insert the date of signing **or** if the date of signing is earlier than the 90th day before the date the petition is submitted to the governing body

Occ. Code Sec. 2001.652(d)

- Signer's current voter registration number, printed name, and residence address, including zip code

Occ. Code Sec. 2001.652(e)

The Bingo Enabling Act requires signatures totaling 10% of the total votes cast in the political subdivision for governor at the last such election. As an alternative to the 10% requirement, the number of signatures may be the amount specified in the document governing the administration of the political subdivision, whichever is less. If boundaries of the political subdivision do not coincide exactly with boundaries of election precincts in effect for the election, the officer verifying the petition may use any reasonable method to estimate the number of votes for governor cast by qualified voters of the political subdivision.

Occ. Code Sec. 2001.652(c)

A.G. Op. H-199 (1974)

The petition is then presented to the governing body. Not later than the fifth day after it receives the petition, the governing body shall present it for verification to the County Clerk if the petition applies to a county or justice precinct, or to the municipal secretary if the petition applies to a municipality. The County Clerk or municipal secretary shall determine if the petition has been signed by the required number of voters.

Occ. Code Sec. 2001.653(a)

Not later than the 30th day after the petition is presented to the officer for verification, the officer shall certify to the governing body whether the petition is valid or invalid, and if the petition is deemed invalid, the officer shall state all reasons for such determination.

Occ. Code Sec. 2001.653(c)

Once a petition is certified as valid, the governing body shall order that an election be held in the appropriate political subdivision on a date not later than the 60th day after the date of the officer's certification. The governing body shall notify the Texas Lottery Commission by certified mail, return receipt requested that an election has been ordered.

Occ. Code Sec. 2001.654(a)

If a uniform election day, as specified in the Texas Election Code, does not occur within the 60-day period, the governing body shall order the election to be held on the next uniform election date specified within that section.

Occ. Code Sec. 2001.654(b)

Elec. Code Sec. 41.001(a)

The proposition on the ballot shall read: "Legalizing (or prohibiting) bingo games for charitable purposes as authorized by the Bingo Enabling Act in (name of political subdivision)."

Occ. Code Sec. 2001.655

If an election to legalize or prohibit bingo carries, the result of such election is effective the 14th day after the date the result of the election is officially declared, except as otherwise provided in Occupations Code Section 2001.657 (see below). If the majority of voters in an election to legalize or prohibit bingo do not vote to do so, the election has no effect on the status of bingo in the political subdivision in which the election was held.

Occ. Code Sec. 2001.656(a)(b)(c)

The governing body of a political subdivision in which a bingo election has been held shall within 14 days after the election give written notification to the Texas Lottery Commission of the results of the election. If a majority of the qualified voters vote to legalize bingo in the political subdivision, the governing body shall furnish the commission with a map prepared by the governing body indicating the boundaries of the political subdivision in which the playing of bingo may be conducted.

Occ. Code Sec. 2001.656(d)

The status of a municipal election prevails over a contrary status voted by a justice precinct or a county; the status of a justice precinct prevails over that of a county; and, to the extent two or more local option elections held at the justice precinct level applies to the same territory, the most recent election prevails.

Occ. Code Sec. 2001.657(c) and (d)

Territory annexed by a municipality after a bingo election assumes the status of the rest of the municipality. Territory detached by the municipality assumes the status the territory would have had if it had never been a part of the municipality. Detached territory added to another municipality assumes the status of the municipality to which it is added.

Occ. Code Sec. 2001.657(e)

The addition or detachment of territory from a justice precinct does not affect the status of the added or detached territory, **except** in a county with a population more than 3.3 million. In that case, the added or detached territory assumes the status of the justice precinct of which it becomes a part. The abolition of a justice precinct does not affect the status of the territory formerly within the justice precinct.

Occ. Code Sec. 2001.657(f)

H. LAY MIDWIVES

The Texas Department of Health shall provide each County Clerk and each local registrar of births within a county the name of each midwife practicing in the county.

Occ. Code Sec. 203.157

I. EMINENT DOMAIN

District courts and county courts at law have concurrent jurisdiction in eminent domain cases. A constitutional county court has no jurisdiction in eminent domain cases.

Prop. Code Sec. 21.001

1. Venue

The venue of a condemnation proceeding is the county in which the owner of the property being condemned resides if the owner resides in a county in which part of the property is located. Otherwise, the venue of a condemnation proceeding is any county in which at least part of the property is located

Prop. Code Sec. 21.013(a)

Except where otherwise provided by law, a party initiating a condemnation proceeding in a county in which there are one or more county courts at law with jurisdiction

Prop. Code Sec. 21.013(b) Sec. 21.013(c)

shall file the petition with any Clerk authorized to handle such filings for that court or courts. A party initiating a condemnation proceeding in a county in which there is not a county court at law must file the condemnation petition with the District Clerk. The filing fee shall be due at the time of filing in accordance with Section 51.317 of the Texas Government Code.

Gov't Code Sec. 51.317

District and County Clerks must assign an equal number of eminent domain cases in rotation to each court with jurisdiction that the Clerk serves.

Prop. Code Sec. 21.013(d)

2. Notice of Decision of Special Commissioners

The judge of a court hearing a proceeding under Chapter 21 of the Property Code (regarding eminent domain) shall inform the Clerk of the court as to a decision by the special commissioners on the day the decision is filed or on the next working day after the day the decision is filed. Not later than the next working day after the day the decision is filed, the Clerk shall send notice of the decision by certified or registered United States mail, return receipt requested, to the parties in the proceeding or to their attorneys of record at their addresses of record.

Prop. Code Sec. 21.049

J. NOTARIZING DOCUMENTS

Unlike a notary public, a court Clerk notarizing instruments for the court does not have to keep a record of the notarization of each instrument.

Gov't. Code Sec. 406.014

> ***NOTE:*** *Contrary to early Attorney General opinions, the Dallas Court of Appeals has declared that a Clerk or Deputy Clerk may, at the same time, hold the office of notary public.*

Hannah v. Walker, 409 S.W. 2d 949 (Tex. Civ. App-Dallas 1966, orig. proceeding)

Upon the resignation, removal, or death of a notary public, the County Clerk of the county in which the notary public resides shall obtain the record books and public papers belonging to the office of the notary public and deposit them in the County Clerk's office.

Gov't. Code Sec. 406.022

K. MENTAL HEALTH BACKGROUND CHECK

The County Clerk, at the request of the Department of Public Safety, will conduct a search of the county records involving the mental condition of a person who applies for a license to carry a concealed handgun. The fee for such a background check may not exceed $2.00 and will be paid to the County Clerk from the application fee submitted to the Department of Public Safety.

Local Gov't Code Sec. 118.0217

The County Clerk's conducting a search of mental health records for the specific purpose outlined above does not affect the procedures for access to court records prescribed by Section 571.015, Health and Safety Code.

L. REPORTING AND NOTICE REQUIREMENTS

The attached list of reporting requirements identifies the various reporting and notice requirements imposed upon County Clerks.

M. NONRESIDENT ATTORNEYS

Clerks should be aware of the law permitting a nonresident attorney to participate in a Texas court proceeding. A nonresident attorney is defined as a person who resides in and is licensed to practice law in another state but who is not a member of the State Bar of Texas. A nonresident attorney who participates in a Texas court appears *pro hac vice*. This

Gov't Code Sec. 82.0361

phrase refers to a lawyer who has not been admitted to practice in a particular jurisdiction but who is admitted to the jurisdiction temporarily for the purpose of participating in a particular case.

A nonresident attorney who wishes to participate in a Texas court proceeding shall first pay a fee of $250 to the Texas Board of Law Examiners for each case in which he or she requests to participate. Then the attorney shall file a motion with the applicable court requesting permission to participate in the particular proceeding in that court. The attorney must provide the court with proof of payment of the $250 fee.

N. OTHER MISCELLANEOUS DUTIES

In addition to the above duties, the Clerk will probably be called upon to perform other services for citizens and county officials.

Occ. Code Sec. 1704.053

As an elected official of the county, the Clerk may serve as a member or recorder of various committees relating to county business, such as a County Bail Bond Board, if the County Clerk has responsibility over criminal matters.

Occ. Code Sec. 2104.051

Outdoor music festivals may be required to file an application with the County Clerk and the promoter shall register with the County Clerk of the county in which the outdoor music festival is to be held.

The Clerk receives and may record public notices of all types prior to posting in the courthouse, excluding school board notices.

CHAPTER 11

RECORDS MANAGEMENT

A. INTRODUCTION

This chapter provides a synopsis of the duties and responsibilities of County Clerks under the Local Government Records Act (Chapters 201-205, Local Government Code). The Act applies to all local governments and elected county officials, not just County Clerks.

The Act requires that all County Clerks establish programs for the efficient and cost-effective management of the records of their offices. It also requires that the records of the office of County Clerk be retained for minimum periods of time set by the Texas State Library and Archives Commission before they are eligible for disposal. When records become eligible for disposal, the disposal/destruction of records that have ceased to have administrative, fiscal, legal or historical value to the county is essential to the success of records management.

B. STATE AGENCY CONTACT

If a Clerk has questions regarding the Local Government Records Act or would like to request assistance in establishing a records management program, the Clerk should contact the Texas State Library, State and Local Records Management Division, by mail at P.O. Box 12927, Austin, TX 78711-2927, or by telephone at (512) 421-7200. Information is also available on the Texas State Library's web site, https://www.tsl.state.tx.us/landing/contact.html.

C. RECORDS MANAGEMENT, GENERAL PROVISIONS

1. Definitions

a. Custodian

County Clerks are the "custodians" of the records of their respective offices. *Local Gov't Code Sec. 201.003(2)*

b. Essential Record

Records that are necessary for the resumption or continuation of operations in an emergency or disaster in order to recreate the office's legal and financial status or to fulfill the office's legal obligations to the public. *Local Gov't Code Sec. 201.003(5)*

c. Local Government Record

Any information created or received by a County Clerk pursuant to law or in the transaction of public business is a local government record, regardless of whether it is a document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or any other type of information recording medium and regardless of whether it is an open or closed record. *Local Gov't Code Sec. 201.003(8)*

For purposes of the Local Government Records Act, the following are **not** local government records:

- extra identical copies of documents created for the convenience of an employee or official (*e.g.*, Clerk's copy of a commissioners court agenda);
- notes, journals, diaries, and similar documents created for the convenience of an employee or official (*e.g.*, telephone message pads and desk calendars);
- blank forms;
- stocks of publications;
- library and museum materials acquired solely for the purpose of display or reference (*e.g.*, law books);
- copies of documents in any media furnished to members of the public to which they are entitled under Chapter 552 of the Government Code, commonly known as the Public Information Act; and
- any records, correspondence, notes, memoranda or documents, other than a final written agreement described by Section 2009.054(c) of the Government Code, associated with a matter conducted under an alternative dispute resolution to which a government entity was a party, facilitated as an impartial third party, or facilitated as the administrator of a dispute resolution system or organization.

2. Declaration of Records as Public Property

Local government records are public property and no official has any personal property right in them.

Local Gov't Code Sec. 201.005

3. Records to Be Delivered to Successor in Office

A custodian of local government records shall deliver to his or her successor all records of the office.

Local Gov't Code Sec. 201.006

4. Alienation of Records

A County Clerk may transfer custody of a local government record to any public institution of higher education, public museum, public library, or other public entity with the approval of the local government's records management officer after the expiration of the records retention period under the local government's records control schedule.

Local Gov't Code Sec. 202.004(a)

A County Clerk may not transfer custody of any of his or her local government records to a private organization or individual without the consent of the director and librarian of the Texas State Library. This prohibition does not apply to records that are temporarily transferred for the purpose of microfilming, conversion to electronic media, restoration, or other records management activities or when records are to be destroyed by sale or donation to a recycler.

Local Gov't Code Sec. 202.004(b) and (c)

5. Personal Liability

A County Clerk who destroys records in compliance with the Local Government Records Act and rules adopted under it is not personally liable for the destruction of those records.

Local Gov't Code Sec. 202.007

6. Penalty for Destruction or Alienation of Records

A County Clerk who knowingly or intentionally destroys or alienates local government records or fails to deliver the records of his or her office to a successor, contrary to the provisions of the Local Government Records Act or rules adopted under it, commits a Class A misdemeanor.

Local Gov't Code Sec. 202.008

D. RECORDS MANAGEMENT IN THE OFFICE OF COUNTY CLERK

1. Administration, Duties and Support

a. County Clerk as Records Management Officer

A County Clerk is automatically designated as the records management officer for his or her office.

Local Gov't Code Sec. 203.001

A County Clerk may, at his or her discretion, designate the person appointed by the commissioners court to serve as records management officer for the non-elective offices of the county to serve as records management officer for the office of County Clerk. It is important to note that in doing so, a County Clerk does not relinquish legal custody of records to the county records management officer, but rather chooses to participate in one or more specific components of a countywide records management program and to have the county records management officer assist the Clerk in meeting the requirements of the Local Government Records Act.

Local Gov't Code Sec. 203.005(g)

A County Clerk may not be designated as records management officer for the non-elective offices of the county without the Clerk's consent.

Local Gov't Code Sec. 203.025(g)

b. Duties of County Clerk as Records Management Officer

A County Clerk, as the records management officer for his or her office, is responsible for:

Local Gov't Code Sec. 203.002

- developing a records management program;
- administering the records management program efficiently and effectively;
- preparing and filing with the director and librarian of the Texas State Library a records control schedule;
- preparing requests for authorization to destroy records not on an approved control schedule and the originals of microfilmed permanent records;
- preparing requests to store records electronically;
- identifying and ensuring the preservation of records of permanent value;
- identifying and ensuring the preservation of essential records;
- ensuring that records management activities (*e.g.*, destruction, preservation and microfilming) are conducted in accordance with the requirements of the Local Government Records Act and rules adopted under it; and

- cooperating with the Texas State Library in records management surveys.

c. Funding for Records Management

Several sources of funding exist for the management and preservation of records held by the County Clerk.

1. The County Clerk is required to assess a filing fee of $5 upon the filing of a civil case or an ancillary proceeding thereto. Money collected from this filing fee is to be placed in a special fund called the records management and preservation fund. Any expenditure from the fund must be approved by the county commissioners court and can only be used for records management and preservation purposes in the county. The funds are not limited to records management and preservation purposes of the County Clerk, but can be used for any records management and preservation purpose in the county.

Local Gov't Code
Sec. 118.052
Sec. 118.0546
Sec. 118.0645

2. The County Clerk has the option of setting a fee of not more than $10 to be assessed upon the filing of any document other than a court document. In other words, a County Clerk may choose to assess this fee on the filing of a record in the official public records. The exact amount of the fee (within the statutory limitations) is to be set by the County Clerk – not by the commissioners court. The fee may be used only to provide for specific records management and preservation purposes. There are special rules for the use of this money in counties that are adjacent to an international boundary. Although the relevant statute does not specify the person or entity that approves expenditures of this money, the common understanding is that the commissioners court has final spending authority. Interest earned on the fund is to be added to the fund.

HB 1513 (83rd Leg) ***Temporarily*** *increased the cap on the fee until 9/1/19*
Local Gov't Code
Sec. 118.011
Sec. 118.0216

AG Op. GA 118

3. A person convicted of a crime in a county-level court is required to pay a $25 fee. Ninety percent of the fee ($22.50) is directed to the records management and preservation fund discussed in paragraph (1) above. The remaining ten percent of the fee ($2.50) is directed to a special County Clerk's records management and preservation fund that can only be used to fund records management and preservation by the County Clerk. The common understanding is that the commissioners court must approve expenditures from this fund.

CCP Art. 102.005(d)

4. The commissioners court is authorized (but not required) to adopt a records archive fee as part of the county's annual budget. The amount of the fee is to be set by the commissioners court, but cannot exceed $10. The fee is to be assessed at the time a person (other than a state agency) presents a public document to the County Clerk for recording or filing. Funds are to be directed to a separate records archive account in the general fund of the county and can only be expended for the preservation and restoration of the County Clerk's records archive.

HB 1513 (83rd Leg) ***Temporarily*** *increased the cap on the fee until 9/1/19*
Local Gov't Code
Sec. 118.001
Sec 118.025

5. The County Clerk can also assess certain fees in connection with the issuance of a vital statistics record. These fees are to be used for preserving vital statistics records maintained by the registrar or County

Health & Safety Code
Sec. 191.0045

Clerk, including birth, death, fetal death, marriage, divorce, and annulment records. HB 2717 (82nd Legislature) expands the purposes for which the fee may be used. Effective 6/17/11, the fee may also be used for training registrar or County Clerk employees regarding vital statistics records and ensuring the safety and security of vital statistics records.

Sec. 191.0045(h)(1), (2), and (3)

2. Planning the Records Management Program

a. The Records Management Plan

Each County Clerk must prepare a written records management plan for his or her office that sets out policies and procedures which will enable the Clerk to fulfill his or her responsibilities as a records management officer. The plan must be filed with the director and librarian of the Texas State Library within 30 days after its adoption.

Local Gov't Code Sec. 203.005

b. Model Plan Available

The Texas State Library has prepared a model plan that can be used by County Clerks to meet the requirement of the Local Government Records Act that a written records management plan be prepared and filed. To request the model, a County Clerk should contact the Texas State Library. A model plan is available on the library's web site: www.tsl.state.tx.us/slrm/recordspubs/forms/local.html.

c. Deadlines and Determining Status

The deadline for filing a written plan was January 1, 1991. A County Clerk who has recently assumed office and is uncertain whether his or her predecessor fulfilled this requirement of the Act should contact the Texas State Library.

3. Scheduling Records

a. The Records Control Schedule

Each County Clerk must prepare and file with the Director and Librarian of the Texas State Library a records control schedule that lists the records of his or her office and how long the Clerk proposes to retain the records listed before disposing of them. The schedules were to have been filed on or before January 4, 1999.

Local Gov't Code Sec. 203.041

The schedule must list all records, by records series, created and maintained in the office and all records no longer created or received that the Texas State Library has determined must be retained permanently or for periods that have not yet expired at the time the Clerk prepares the schedule.

Schedules may be filed on an office-by-office or department-by-department basis. A County Clerk may, for instance, submit one schedule for administrative records, a second for court records, and a third for all other records.

The Clerk should prepare amendments to the records control schedule as needed to reflect new records created or received by the Clerk's office or revisions to retention periods established in a records retention schedule issued by the State Library and Archives Commission.

In lieu of filing a records control schedule (or an amended records control schedule), the Clerk may file a written certification of compliance (or an amended written certification of compliance) that the Clerk's office has adopted record control schedules that comply with the minimum requirements established on record retention schedules issued by the Texas State Library and Archives Commission.

b. Retention Periods

Local Gov't Code Sec. 203.042

The retention periods chosen by the County Clerk for the records of his or her office may not be less than the minimum retention periods established by the Texas State Library for the various records of the office of County Clerk.

c. Retention Schedule for Records of County Clerks

The Texas State Library's retention periods for documents maintained by a County Clerk can be found in the "Retention Schedule for Records of County Clerks" (also known as "Local Schedule CC"). It can be accessed via the Internet at the Texas State Library's web site, located at www.tsl.state.tx.us/slrm/recordspubs/cc.html. For those without Internet access, a copy of the document can also be requested directly from the State and Local Records Management Division of the State Library.

4. Not Scheduling Records

a. Declaring Intention to Keep All Records Permanently

Local Gov't Code Sec. 203.041(g)

A County Clerk who wishes to keep all records of his or her office permanently or wishes to destroy only those for which the Texas State Library has not set minimum retention periods is not required to prepare and file records control schedules.

b. How to Make the Declaration

The model plan prepared by the Texas State Library has a section in which the decision to prepare a records control schedule or to declare permanent retention can be made.

c. What the Declaration Means

The *Texas County Records Manual* is quite thorough and minimum retention periods for almost all records of the office of County Clerk have been established. Remember also that a declaration of intention to keep all records permanently means even such records as cash receipts would have to be retained indefinitely.

5. Microfilming Records

a. Records That May Be Filmed

Local Gov't Code Sec. 204.002

Any record of a County Clerk may be filmed and retained on microfilm either as the sole recording media or in addition to paper or other media.

b. Microfilming Standards

Local Gov't Code Sec. 204.004

Any filming of records must be in accordance with microfilming standards and procedures established by the Texas State Library and Archives Commission. These

standards are contained in the Texas Administrative Code, or are available on request from the Texas State Library.

13 TAC Sections 7.21-7.35

All microfilm produced before June 1, 1990 under prior law is validated to the extent the microfilm was produced in the manner and according the standards prescribed by prior law. The Texas State Library and Archives Commission may establish procedures for the retrospective certification of uncertified or improperly certified microfilm produced before April 1, 1990, that otherwise meets the standards prescribed by law.

Local Gov't Code Sec. 204.003

While Section 118.024(a) of the Local Government Code provides a right to copy from a microfilm record, it provides no duty on the part of County Clerk to provide a record for purchase in the form of microfilm.

A.G. Op. DM-30 (1991)

A.G. Op. DM-41 (1991)

A contract for microfilming of records of a County Clerk's office is subject to competitive bidding. It does not fall within the "personal or professional service" exception of Local Government Code 262.024.

Local Gov't Code Sec. 262.023

A.G. Op. JM-890 (1988)

c. Classification of Records

If a County Clerk chooses to maintain records on microfilm as provided by Chapter 204, Local Government Code, and rules adopted under that chapter, the Clerk is required to divide the instruments received for filing, registering, or recording into the following seven classes for recording on microfilm.

Local Gov't Code Sec. 193.008

1. Records relating to real property, known as "Official Public Records of Real Property";
2. Records relating to receivables, chattels, and personal property, known as "Official Public Records of Personal Property and Chattels";
3. Records relating to probate matters, known as "Official Public Records of Probate Courts";
4. Records relating to county civil court matters, known as "Official public Records of County Civil Courts";
5. Records relating to county criminal court matters, known as "Official Public Records of County Criminal Courts";
6. Records relating to matters in the commissioners court, known as "Official Public Records of Commissioners Court";
7. Records relating to an individual, a business entity, or a governmental agency other than a property record or a court record, known as "Official Public Records of Governmental, Business, and Personal Matters."

The Clerk may consolidate the records described by numbers 1 and 7 above into a single class known as "Official Pubic Records."

d. Indexing

An index to a microfilmed record must show the same information that state law requires for the record if it is not microfilmed.

Local Gov't Code Sec. 204.006 Sec. 193.009

An instrument that is recorded and classified on microfilm as provided above must be alphabetically indexed and cross-indexed in the indexes to that record under the names of the parties identified in the instrument.

Local Gov't Code Sec. 193.009

The index entry for an instrument recorded in the official public records of real property, personal property and chattels, or governmental, business, and personal matters must include:

- the names of the parties of the instrument;
- a brief description of the instrument;
- the date of filing;
- a brief description of the property, if any; and
- the location of the microfilm image of the instrument by roll or group number and by image number, or by another suitable method permissible under the rules adopted under Chapter 204, Local Government Code.

The index entry for an instrument recorded in the official public records of probate courts, county civil courts, county criminal courts, or the commissioners court must give information that would assist in further identifying the cause or action, including:

Local Gov't Code Sec. 193.009(b)

- the names of the parties to the action, except an action in the commissioners court;
- the nature of the cause or action;
- the date the cause or action was opened or taken;
- the court in which the cause of action lies;
- the docket number; and
- the location of the microfilm image of the instrument by roll or group number and by image number, or by another suitable method permissible under rules adopted under Chapter 204, Local Government Code.

The Clerk must periodically revise the indexes throughout the year to obtain a complete alphabetical index to each of the classes of official public records for each calendar year. The Clerk may not make a marginal entry to a previously completed index.

Local Gov't Code Sec. 193.010

A current register of court docket numbers must be maintained in numerical order for each type of court record included in an official public record. The entries in the register of court documents must include essentially the same information included in an equivalent index entry under Section 193.009 (listed above).

Local Gov't Code Sec. 193.011

After an original instrument that is not related to a court matter or proceeding has been microfilmed, the Clerk shall return the original instrument to the person who

Local Gov't Code Sec. 193.012

filed it for record.

The index may be maintained by computer, provided a backup copy is made daily and stored in a climate-controlled facility with fire alarms and sprinklers. The storage facility must be separate from the building in which the computer is located.

Local Gov't Code Sec. 193.013

e. Destruction of Records

If the minimum retention period set by the Texas State Library for the original record is less than permanent, the record may be destroyed after the County Clerk is satisfied that the microfilm has been produced in accordance with the standards of the Texas State Library and Archives Commission. Permission from the Texas State Library is not required for destruction. A list of the originals destroyed must be filed with the Clerk. The microfilmed record must be retained until the expiration of its retention period for the record.

Local Gov't Code Sec. 204.007

If the minimum retention period set by the Texas State Library for the original record is permanent and the County Clerk is satisfied that the microfilm has been produced in accordance with the standards of the commission, it may be destroyed after authorization is obtained from the director and librarian of the Texas State Library. Forms for this purpose are available from the Texas State Library. As part of the authorization, the Director and Librarian may require that the records be transferred to the custody of the Texas State Library rather than being destroyed. The microfilm of permanent records must be retained permanently.

Local Gov't Code Sec. 204.008

f. Effect as an Original Record

Microfilm records produced in accordance with the standards of the Texas State Library and Archives Commission or in accordance with prior law if filmed before June 1, 1990, are to be accepted by state agencies and courts as certified copies of original records.

Local Gov't Code Sec. 204.011

6. Storing Records Electronically

a. Records that May be Stored Electronically

Any record of a County Clerk may be stored electronically (e.g., on computer hard disk, magnetic tape, optical disk, or similar machine-readable medium) in addition to or in lieu of any other medium.

Local Gov't Code Sec. 205.002

b. Electronic Storage Standards

The electronic storage of any record whose minimum retention period is set by the Texas State Library as 10 years or more must be stored in accordance with standards and procedures established by the Texas State Library and Archives Commission. These standards are contained in the Texas Administrative Code or are available on request from the Texas State Library.

Local Gov't Code Sec. 205.003

13 TAC Sections 7.71-7.79

c. Electronic Storage Authorization Requests

Before electronically storing any record whose retention period is set by the Texas State Library at 10 years or more, the County Clerk must obtain authorization to do so. Forms are available for this purpose from the Texas State Library.

Local Gov't Code Sec. 205.007

d. Destruction of Source Documents

Local Gov't Code Sec. 205.008

If an electronic storage authorization request is approved, the source document may be destroyed. If the minimum retention period set for a source document is less than 10 years (for which an electronic authorization request is not required), the source document may be destroyed after the information in it is stored electronically.

In either case, the electronic recording medium and the software and hardware necessary to read it must be kept until the retention period for all source documents has expired.

A County Clerk may also destroy electronically stored records if the source documents have been retained or if a paper or microfilm copy of the data has been generated from the electronic media.

e. Indexing

Local Gov't Code Sec. 205.006

An index to records stored electronically must show the same information that state law requires for the source document.

f. Denial of Access Prohibited

Local Gov't Code Sec. 205.009

Persons under contract with a County Clerk to provide electronic services or equipment may not refuse to provide the Clerk timely access to the records of the office in a usable format.

7. Destruction of Records

a. When Lawful Destruction Can Occur

Local Gov't Code Sec. 202.001

A County Clerk may lawfully destroy records if:

- they appear on the office's records control schedule submitted to and approved by the Director and Librarian of the Texas State Library and Archives Commission and their retention periods on the schedule have expired or the original records have been microfilmed or stored electronically in accordance with Chapters 204 and 205, Local Government Code, respectively, including administrative rules of the Texas State Library and Archives Commission adopted under those chapters;
- the record appears on a list of obsolete records approved by the Director and Librarian of the Texas State Library and Archives Commission;
- they do not appear on the office's approved records control schedule or a schedule has not yet been submitted and a Request for Authorization to Destroy Records has been submitted to and approved by the Director and Librarian of the Texas State Library and Archives Commission;
- they are destroyed pursuant to an expunction order; or
- the Texas State Library and Archives Commission has defined the records as exempt from scheduling or filing requirements.

NOTE: *If a County Clerk wishes to dispose of a backlog of obsolete records prior to submitting a records control schedule as provided by section 203.044, Local Government Code, the Clerk should use Form SLR 501 for this purpose. These request forms are available from the Texas State Library.*

b. Litigation and Open Records Requests

Local Gov't Code Sec. 202.002

A County Clerk may not destroy any records the Clerk knows to be a subject of litigation or for which there is an open records request until the matter is resolved.

c. Method of Destruction

Normally a Clerk may destroy records by burning, shredding, pulping, burial in a landfill, or sale or donation for recycling. A Clerk who sells or donates records for recycling is required to establish procedures to ensure that the records are rendered unrecognizable as local government records by the recycler.

Local Gov't Code Sec. 202.003 Sec. 202.006

Records designated as exempt from public disclosure by the Open Records Act or any other state law may be destroyed only by burning, shredding, or pulping. Extra, identical copies of these closed records must be destroyed in the same manner.

CHAPTER 12

PARENTAL NOTIFICATION

A. INTRODUCTION

Family Code Chapter 33

In 1999, the Legislature enacted legislation requiring parental notification or judicial approval before a minor can have an abortion. As of January 2000, minors who choose to have an abortion without notifying a parent must obtain approval by a judge. These cases are legally confidential and of a sensitive nature. Many of these cases will be filed in district court.

Family Code Sec. 33.003(k) SCR 1.3(a) SCR 1.4(a)

The statute and the Texas Supreme Court Parental Notification Rules require that these proceedings be conducted to ensure the minor's confidentiality and anonymity. The Clerk's only duty is to file the application and, if needed, provide assistance to the minor in completing the application. All communication must be limited to the procedure for filing an application and must be in a respectful manner. Do *not* offer the minor any advice, opinion, or referral to any organization regarding problem pregnancies.

The Clerk may not divulge to anyone, except essential court personnel, anything about the minor's application, including the fact that the minor was ever in the Clerk's office. The Clerk may not divulge to anyone that the minor is or ever has been pregnant, or wants or ever wanted an abortion.

SCR 1.4(b)

In Re Jane Doe, 19 S.W. 3d 249 (Supreme Court of Texas – 2000)

The application and all other court documents pertaining to the proceeding, and all information contained therein, are confidential and privileged. (The Supreme Court of Texas has ruled that even the disclosure of which trial court in which a proceeding was held violates confidentiality.) They are not subject to disclosure under Chapter 552 of the Government Code, nor are they subject to discovery, subpoena, or other legal process. They may be disclosed only when expressly authorized by the Supreme Court Rules. An order, ruling, opinion, or Clerk's certificate may be released only to the minor; her guardian ad litem; her attorney; a person specifically designated in writing by the minor; a governmental agency in connection with a proceeding seeking to assert or protect the minor's interest; or another court, judge, or Clerk in the same or related proceedings.

Occ. Code Sec. 164.052(a)(19)

A doctor many not perform an abortion on an unemancipated minor without written parental consent, UNLESS a court order is obtained in accordance with Family Code Section 33.003 or 33.004 via the judicial bypass provisions outlined below. The physician may perform an abortion without parental consent under certain emergency circumstances, which are unrelated to Clerks' duties.

B. FILING THE APPLICATION

Family Code Sec. 33.003(a)

Unless a minor meets the medical necessity criteria and her physician gives the notice required under Section 33.002(a)(4), the minor must have judicial approval in order to have an abortion without parental notification. A minor who wishes to have an abortion without notification to one of her parents or legal guardian may file an application for a court order authorizing the minor to get an abortion without notifying one of her parents.

The application may be filed in any county court at law, court having probate jurisdiction, or district court, including a family district court, in any county in this state, regardless of the where the minor resides or where the abortion sought is to be performed. No filing fees or court costs may be assessed or charged to the minor.

Family Code Sec. 33.003(b) Sec. 33.003(n) SCR 1.9(a) SCR 2.1(a)

There may be no reference to the minor's identity anywhere in the proceedings, except on the separate verification page, discussed below. In all other court documents, the minor is referred to as "Jane Doe." To preserve her anonymity, all notices and communication from the court must be to the minor's attorney. This requirement takes effect when an attorney appears for the minor, or when the Clerk has notified the minor that an attorney ad litem has been appointed for her.

SCR 1.3(b) SCR 1.3(c)

1. Application Requirements

To further ensure confidentiality, the rules promulgated by the Supreme Court require that the application be in two parts: the cover page and the verification page. The cover page must be styled "In re Jane Doe" and must not contain any identifying information about the minor.

SCR 2.1(c)(1)

The application must be made under oath and include all of the following:

Family Code Sec. 33.003(c)

- Statement that the minor is pregnant
- Statement that the minor is unmarried, is under 18 years of age, and has not had her disabilities of minority removed
- Statement that the minor wishes to have an abortion without the notification of either of her parents or a managing conservator or guardian
- Statement as to whether the minor has retained an attorney and, if she has retained an attorney, the name, address, and telephone number of her attorney

The separate verification page must be signed under oath by the person completing it and must state the following:

SCR 2.1(c)(2)

- Minor's full name and date of birth
- Name, address, telephone number, and relationship to the minor of any person the minor requests the court to appoint as her guardian at litem
- Telephone number or pager number, whether hers or someone else's, at which the minor can be contacted immediately and confidentially until an attorney is appointed for her
- That all the information contained in the application is true

2. Electronic Filing, Hearings and Records

The rules promulgated by the Supreme Court of Texas permit electronic filings, hearings and records.

SCR 1.5

Documents may be filed by facsimile or other electronic transmission means. The Clerk may transmit orders, rulings, notices, and other documents by facsimile or other electronic transmission means. Care should be taken to ensure the documents electronically transmitted, either to or from the court, cannot be seen by other parties to maintain confidentiality.

With the court's permission, the guardian ad litem, the attorney ad litem, and any witnesses may appear by video conferencing, telephone, or other remote electronic means. However, the minor must appear before the court in person, unless the court determines that her appearance by video conferencing is sufficient to assess her credibility and demeanor.

If a court reporter is unavailable at the time of the hearing, a record of the hearing may be made by audio recording or other electronic means. If the decision is appealed, the recording must be transcribed, if possible. The person transcribing the recording must certify the accuracy of the transcription. Both the recording and the transcription must be included in the record on appeal that the Clerk sends to the court of appeals.

3. Clerk's Duties

SCR 2.2(a)
SCR 1.7

The Clerk must give prompt and courteous assistance to persons seeking to file an application. In fact, the Clerk is required to provide a copy of the Supreme Court Parental Notification Rules as well as the relevant forms promulgated by the Supreme Court (such as the application form) to any person without charge. The forms must be in both English and Spanish.

A copy of the rules and forms can be accessed through the Texas Supreme Court website at: http://www.supreme.courts.state.tx.us/rules/rules.asp.

SCR 2.2(a)

The Clerk should ensure that both the cover page and the verification page of the application are completed in full. If requested, the Clerk will administer the oath required for the verification page, or provide a person authorized to do so.

SCR 2.2(b)

Because of the confidentiality requirements, the Clerk should not enter information about the case in case management software or docket the application as a regular case. The Clerk must assign a case number and write it on the cover page and the verification page, then provide a certified copy of the verification page to the applicant. The verification page must be filed under seal in a secure place, with access limited to essential court personnel.

SCR 2.1(b)(3)
SCR 2.1(b)(4)

The initial assignment of an application to a specific court in a county is made by the Clerk with whom the application is filed. Judges may be assigned in accordance with a county's local rules, which require approval by the Supreme Court of Texas. If there is no local rule, the Clerk receiving the application (whether District Clerk or County Clerk) assigns it to a district court, if a judge is in the county. If not, the case is then assigned to a statutory county court or probate court. If that judge is not in the county, then the case is assigned to a constitutional county court, if it has probate jurisdiction and if the judge is in the county. If the case cannot be assigned under any of these requirements, then it is assigned to the district court.

SCR 2.2(d)

If the judge of the court to which the application is assigned is not in the county, the Clerk must immediately inform the local administrative judge so the case may be reassigned.

C. JUDICIAL PROCEEDINGS

1. Before the Hearing

SCR 2.2(c)
Family Code Sec. 33.003(d)

The Clerk of the court must deliver a copy of the application (the cover page and the verification page) to the judge who is to hear the application.

The court is required to appoint a guardian ad litem for the minor. If the minor has not retained an attorney, the court is required to appoint an attorney to represent the minor. If the guardian ad litem is an attorney admitted to the practice of law in this state, the court may appoint the guardian ad litem to serve as the minor's attorney.

Family Code Sec. 33.003(e)

The court must fix a time for a hearing on an application filed and keep a record of all testimony and other oral proceedings in the action. The Clerk must give notice of the time and place of the hearing, and must notify the persons appointed as guardian ad litem and attorney ad litem of their appointments, as well as the time and place of the hearing.

Family Code Sec. 33.003(g) SCR 2.2(e)

A minor may object to the assignment of a judge or file a motion to recuse or disqualify the judge. The objection or motion must be filed before 10:00 a.m. of the first business day following the filing of the application or promptly after the assignment of a judge to hear the case is made known to the minor or her attorney, whichever is later. Such objection or motion does not extend the deadline for ruling on a minor's application. The minor may object to or file a motion to recuse or disqualify the judge only once in the proceeding.

SCR 1.6(a) SCR 1.6(d)

A judge may recuse himself voluntarily and must do so immediately, if that is his choice. If the judge does not remove himself voluntarily, then the judge must immediately refer the matter to the appropriate judge or justice, pursuant to local rule. That judge or justice must rule on the objection or motion as soon as possible, and may do so with or without a hearing. If the motion is granted, the judge or justice who made the ruling must assign a new judge immediately.

SCR 1.6(b),(c)

Any judge involved in a proceeding in any capacity may have access to all information (including the verification page) in the proceeding or any related proceeding, such as a prior filing by the minor. A minor's attorney and guardian at litem must have access to the case file to the extent necessary to perform their respective duties.

Comment No. 3 to SCR Rule 1 (2001)

To assist the court in making its determination, amicus briefs may be submitted to the court. These briefs are not to be filed with the Clerk and are subject to all anonymity and confidentiality provisions contained in the Supreme Court Rules and Chapter 33, Family Code.

SCR 1.10

2. After the Hearing

The court must enter judgment on the application immediately after the hearing is concluded. The court must rule on an application and issue written findings of fact and conclusions of law not later than 5:00 p.m. on the second business day after the date the application is filed with the court. The Clerk must provide a copy of the order, including the findings of fact and conclusions of law, to the minor and her attorney ad litem.

Family Code Sec. 33.003(g) Sec. 33.003(h)

SCR 2.2(f)

The time to issue an order may be extended only upon request by the minor. If a request for an extension is made, the court will rule on an application and must issue written findings of fact and conclusions of law not later than 5:00 p.m. on the second business day after the date the minor states that she is ready to proceed to hearing.

SCR 2.4(a) SCR 2.5(d)

If the court fails to rule on the application and issue written findings of fact and conclusions of law within the period specified by this subsection, the application is deemed to be granted and the physician may perform the abortion as if the court had issued an order authorizing the minor to consent to the performance of the abortion without notification.

SCR 2.5(d)

Family Code Sec. 33.003(h)

These proceedings must be given precedence over other pending matters to the extent necessary to assure that the court reaches a decision promptly.

SCR 1.2(a)

An order of the court issued under this section is confidential and privileged and is not subject to disclosure under Chapter 552, Government Code, or discovery, subpoena, or other legal process. The order may not be released to any person but the minor, the minor's guardian ad litem, the minor's attorney, another person designated to receive the order by the minor, or a governmental agency or attorney in a criminal or administrative action seeking to assert or protect the interest of the minor.

Family Code Sec. 33.003(l)

3. Payment of Fees and Costs

The court may order the State to pay the cost of any guardian ad litem and attorney ad litem appointed for the minor. The court may also order the State to pay associated court fees and costs, as well as any court reporter's fees incurred. Court costs include the expenses of an interpreter but not witness fees or fees which must be remitted to the state treasury.

Family Code Sec. 33.007

SCR 1.9(b)

The order must be directed to the Comptroller of Public Accounts but should be sent by the Clerk to the Director, Fiscal Division, Texas Department of Health. Confidentiality is not affected by this transmission. However, the comptroller, the Department of Health or the Office of Court Administration may disclose total amounts paid for all proceedings, average amount per proceeding, or other statistical information which does not impair the confidentiality of a specific proceeding.

SCR 1.9(b)(2)

The Attorney General has issued several open records rulings regarding what information may be released without impairing confidentiality. Identification of the trial court, amounts paid to a specific trial court, information regarding attorneys appointed and amounts paid to them, and a list of attorneys who have received payments have all been held to be confidential. These types of information, as well as any other information that may serve to identify a trial court or any participant in a proceeding, are exempt from disclosure under Government Code Chapter 552.

OR 2001-2485
OR 2002-2558
OR 2002-3007

D. CERTIFICATE

As discussed above, if the relevant judge fails to rule on an application within the time required by Section 33.003(g, h) of the Family Code then the application is deemed to be granted. Upon the request of the minor or her attorney, the Clerk must immediately issue a certificate stating that the application is deemed by statute to be granted.

SCR 2.2(g)

E. APPEAL

A minor whose application has been denied may appeal to the court of appeals with jurisdiction over civil matters in the county in which the application was filed. When the application is denied, the court must inform the minor of her right to appeal and furnish her with the appropriate appeal form.

SCR 2.5(e)

Family Code Sec. 33.004

Upon receipt of a notice of appeal, the Clerk of the court that denied the application must deliver to the appellate court a copy of the notice of appeal and the Clerk's record. The Clerk will include the reporter's record if it has been provided and is in the file. (Court reporter's notes, in any form, may be filed with other court documents in these proceedings) The verification page is not included in the record on appeal.

Family Code Sec. 33.004
SCR 1.4(c)

The trial court Clerk must not send the record to the Clerk of the court of appeals by mail but must, if feasible, deliver the record by hand or transmit it by facsimile or other electronic means.

SCR 3.2(b)

The minor or her attorney is responsible for filing a notice of appeal with the appropriate court of appeals and for notifying the court of appeals by telephone that the appeal is being taken under Family Code 33.003.

SCR 3.1

It is the Clerk's responsibility to give prompt assistance to persons seeking to file an appeal. Such assistance includes assuring that the notice of appeal is sent to the proper court of appeals and that no identifying information is disclosed.

SCR 3.2(a)

The appellate proceeding is not subject to disclosure, subpoena, discovery, or other legal process. A filing fee is not required and costs may not be assessed to the minor for filing an appeal.

Family Code
Sec. 33.004(c)
Sec. 33.004(e)

A minor may appeal to the Supreme Court of Texas if her appeal is denied by the court of appeals. The District Clerk has no role in this proceeding, except to inform the minor of the availability of this remedy and provide whatever assistance the minor may request.

SCR 4

> ***NOTE:*** *The Supreme Court of Texas has held that the "confidential appeal" requirement of Family Code Section 33.004(f) is not an impediment to publication of opinions regarding parental notification proceedings. The Supreme Court must not, of course, disclose any identifying information regarding the minor, the trial court, or the court of appeals.*

In Re Jane Doe
19 S.W. 3d 249
(Supreme Court of Texas – 2000)

CHAPTER 13

JUVENILE LAW

A. INTRODUCTION

The Juvenile Justice Code (Title 3, Chapters 51-61, Family Code) is the basis for juvenile law in Texas. One of its primary purposes is to provide a simple judicial procedure through which the provisions of Title 3 are executed and enforced and in which the parties are assured a fair hearing and their constitutional and other legal rights recognized and enforced.

Family Code Sec. 51.01(6)

The provisions of the Juvenile Justice Code apply to children. For purposes of the code, a child is defined as a person who is:

Family Code Sec. 51.02(2)

- 10 years of age or older and under 17 years of age; or
- 17 years of age or older and under 18 years of age who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age.

While not subject to the jurisdiction of the juvenile courts, children as young as 7 may be provided with early intervention services by the Department of Protective and Regulatory Services.

Family Code Sec. 264.302

It is important to note that married persons under the age of 18 are still subject to the provisions of the Juvenile Justice Code. The statutory definition makes no provision for married persons, and the Attorney General has stated that all rules and procedures must be followed for married as well as unmarried persons subject to the Juvenile Justice Code.

AG Op. MW-298 (1981)

In 2011 the Texas Youth Commission and Texas Juvenile Probation Commission were abolished and the Texas Juvenile Justice Department was created to take their place.

1. Courts Hearing Juvenile Cases

The juvenile court of a county, as designated by the county's juvenile board, has jurisdiction for cases dealing with juvenile delinquents. The designated juvenile court may be a district court, county court, or county court at law. If the county court is designated as a juvenile court, at least one other court must also be designated as the juvenile court. If the judge of a designated juvenile court is not a licensed Texas attorney, then an alternate court, the judge of which is a licensed Texas attorney, must be designated. In most counties, a district court is the designated juvenile court and will also hear family law/domestic relations matters. In 2013, Senate Bill 92 amended Section 51.04 to allow a court that has jurisdiction over proceedings under Title 5 to be designated by the county juvenile board as a juvenile court. There must at all times be at least one juvenile court designated for each county.

Family Code Sec. 51.04

SB 92 (83rd Leg.)

2. Jurisdiction

Generally speaking, juvenile courts have original jurisdiction over all alleged offenders under the age of 18. However, there are four situations in which a criminal court, not a juvenile court, has jurisdiction even though the offender is under age 18: perjury,

Family Code Sec. 51.04

traffic violations, violation of statutes or ordinances punishable by fines only, and alcohol violations. These will be discussed in more detail in Section C, Transferring to Criminal Courts.

B. PROCEEDINGS

Before proceedings commence, both of the following determinations must be made: *Family Code Sec. 51.02(2)*

1. That the person referred to juvenile court is a child as defined in the Family Code; and
2. That there is probable cause to believe the child engaged in delinquent conduct or conduct indicating a need for supervision.

Next, the type of conduct in which the child engaged must be determined: criminal activity, delinquent conduct, or conduct indicating a need for supervision. Delinquent conduct and conduct indicating a need for supervision are defined in Sections 51.03(a) and 51.03(b), respectively, of the Family Code. A child adjudicated of delinquent conduct can be placed on probation or, if certain conditions are met, be committed to the Texas Youth Commission or Texas Juvenile Justice Department. A child adjudicated for conduct indicating a need for supervision cannot be committed to the Texas Juvenile Justice Department. *Family Code Sec. 51.03*

Cases for delinquent conduct and conduct indicating a need for supervision require separate handling from criminal cases. The Clerk reserves a special judge's docket, file docket, index, minutes, and case jacket file for juvenile cases.

Procedures for filing and issuance of processes in juvenile cases are as follows:

- The prosecuting attorney files with the Clerk a petition for adjudication or transfer. The petition includes a statement of facts as to why the child should be found to have engaged in delinquent conduct or conduct indicating a need for supervision. *Family Code Sec. 53.04*
- The Clerk issues a summons with a copy of the petition to the child and the child's parent, guardian, or custodian to advise them of the charge and the hearing date. *Family Code Sec. 53.06*
- The court may endorse on the summons an order directing the person having the physical custody or control of the child to bring the child to the hearing. The juvenile court may issue a writ of attachment for a person who violates this order. The writ of attachment is executed in the same manner as in a criminal proceeding. *Family Code Sec. 53.06 Sec. 53.08*

If the child is taken into custody prior to the hearing on the petition, the intake officer must immediately investigate and determine if detention is warranted. The child can be detained only if: *Family Code Sec. 53.02*

1. The child is likely to abscond or be removed from the jurisdiction of the court;
2. The child is not being adequately cared for and supervised;
3. There is no adult to ensure the child's appearance in court;
4. The child is a danger to himself or herself or to others; or

5. The child has previously been found to be delinquent or has previously been convicted of a penal offense punishable by a term in jail.

Family Code Sec. 53.02(f)

Detention is mandatory if the child used, possessed or exhibited a firearm during the commission of the offense.

Family Code Sec. 54.01

If the child is not released, an informal detention hearing is held pursuant to the provisions of Chapter 54, Family Code. The child must be released unless one of the above five conditions exist. Any release, whether before or after a detention hearing, is conditioned upon the responsible adult agreeing to produce the child for the adjudication hearing.

Family Code Sec. 54.03(a)

The next step in the process is an adjudication hearing. A child may be found to have engaged in delinquent conduct or conduct indicating a need for supervision only after an adjudication hearing.

Family Code Sec. 54.03(c)

The adjudication hearing is conducted as a trial by jury, unless a jury is waived under section 51.09 of the Family Code. The jury's verdict must be unanimous.

Family Code Sec. 54.03(g), (h)

If the court or jury finds the child did not engage in delinquent conduct or conduct indicating a need for supervision, the case is dismissed with prejudice. If an affirmative finding is made, the court sets a date for a disposition hearing.

Family Code Sec. 54.04(a)

The final hearing held in a juvenile case is the disposition hearing. This hearing is separate and distinct from, and must be held subsequent to, the adjudication hearing.

Family Code Sec. 54.04(c),(d) SB 511 and Hb 2862 (83rd Leg.)

No disposition may be made unless the child is in need of rehabilitation, or the protection of the public or the child requires that disposition be made. In 2013 Family Code Section 54.04 was amended by HB 2862 and by Senate Bill 511. SB 511 amended Subsections (d) and (q) and added Subsection (z). HB 2862 changed the deadline for a court to provide the attorney for a child in a disposition hearing or in a hearing to modify a disposition with access to all written matter to be considered by the court. The bill also authorizes a court, if the court or jury make the finding necessary for the court to make a disposition in a case, to place the child in a suitable nonsecure correctional facility that is registered and meets the applicable standard for the facility. No disposition placing the child on probation outside the child's home may be made unless the court finds the child's home to be inadequate to enable the child to fulfill the requirements of probation. The court may order the child to be placed on probation, to be committed to the Texas Youth Commission for an indeterminate time, or to be committed to the Texas Youth Commission, with a possible transfer to the Texas Department of Criminal Justice. Special probation conditions apply when the child has violated Section 28.03 or Section 42.08 of the Penal Code.

Family Code Sec. 54.046

Family Code Sec. 54.0408

A juvenile probation officer will refer a child with a mental illness or mental retardation to an appropriate local authority at least three months before the term of probation is to be completed. A referral is not needed if the child is already receiving treatment from a mental health or mental retardation authority in the county in which the child resides.

Family Code Sec. 54.04(h)

At the conclusion of the disposition hearing, the court must inform the child of his or her right to appeal and the procedures for sealing records. Sealing of records is covered in detail in section D of this chapter.

1. Fees

If a disposition hearing is held and the court finds the child, parent, or other person responsible for the child is financially able to pay the fee, a fee of $20 is to be charged as costs of court. This fee is paid into the state Juvenile Probation Diversion Fund.

Family Code Sec. 54.0411(a)

If a child is placed on probation, the juvenile court may charge a fee of not more than $15 a month during a child's probation. If the court finds that a child, parent, or other party financially responsible for the child's support is financially unable to pay the probation fee, the court must enter into the records of the child's case a statement of that finding. The court may waive this fee only if the court makes this finding.

Family Code Sec. 54.061

A "juvenile delinquency prevention fee" applies when a child is adjudicated as having engaged in delinquent conduct that violates Section 28.08, Penal Code. The juvenile court will order the child, parent, or other person responsible for the child's support to pay to the court a $5 juvenile delinquency prevention fee as a cost of court. The court must deposit fees received under this law to the credit of the county graffiti eradication fund provided for under Article 102.0171, Code of Criminal Procedure. If the court finds that a child, parent, or other person responsible for the child's support is unable to pay the juvenile delinquency prevention fee, the court will enter into the child's case records a statement of that finding. If the court finds and documents that the person responsible for this fee is unable to pay, the court may waive the fee.

Family Code Sec. 54.0461

If a child is adjudicated as having engaged in delinquent conduct that constitutes the commission of a felony and the provision of a DNA sample is required under Section 54.049 or other law, the juvenile court shall order the child, parent, or other person responsible for the child's support to pay to the court as a cost of court: (1) a $50 fee if the disposition of the case includes a commitment to a facility operated by or under contract with the Texas Youth Commission; and (2) a $34 fee if the disposition of the case does not include a commitment described by Subdivision (1) and the child is required to submit a DNA sample under Section 54.0409 or other law. The Clerk of the court shall transfer to the comptroller any funds received under this section. The comptroller shall credit the funds to the Department of Public Safety to help defray the cost of any analyses performed on DNA samples provided by children with respect to whom a court cost is collected under this section. If the court finds that a child, parent, or other person responsible for the child's support is unable to pay the fee required under Subsection (a), the court shall enter into the child's case records a statement of that finding. The court may waive a fee under this section only if the court makes the finding under this subsection.

Family Code Sec. 54.0462

The juvenile court may order the parent or other person responsible for the support of the child to reimburse the county for payments the county made to counsel appointed to represent the child under Family Code Section 51.10, subsection (f) or (g). Payment may be ordered for each attorney who represented the child at any hearing, and may include amounts paid to or on behalf of the attorney by the county for preparation time, investigative costs and expert witness costs. However, the court may not order payments that exceed the financial ability of the parent or other responsible person to meet the payment schedule set by the court.

Family Code Sec. 51.10(k)(l)

C. TRANSFERRING TO OTHER COURTS

1. Mandatory Transfers

Depending on the nature of the case, the juvenile court may waive its exclusive

original jurisdiction and transfer a child to another court.

Family Code Sec. 54.02(m)

In some cases, transfer to a district court or criminal district court (if such courts exist in the child's county) is mandatory. Transfer is mandatory if the child is alleged to have committed a felony and the child has previously been transferred to a district or criminal district court, unless, in the matter previously transferred, one of the following occurred:

- The child was not indicted by a grand jury.
- The child was found not guilty.
- The matter was dismissed with prejudice.
- The child was convicted, the matter was reversed on appeal, and the appeal is final.

Family Code Sec. 54.02(n)

When transfer is mandatory, the required summons must provide notice that the purpose of the hearing is to consider mandatory transfer to criminal court. Likewise, the study which must be conducted in discretionary transfers is not required in mandatory transfers. Both the summons and the study are discussed in more detail in the next section, Discretionary Transfers; *see also*, Proceedings, this chapter.

2. Discretionary Transfers

Family Code Sec. 54.02(a)

The juvenile court may waive its original exclusive jurisdiction and transfer a matter to a district court for regular criminal proceedings if the child is alleged to have committed particular felonies at certain ages, no adjudication hearing has been conducted, and the court determines there is probable cause to believe the child committed the offense and that because of the seriousness of the offense or the background of the child or the welfare of the community criminal proceedings are required. The petition and notice requirements of Sections 53.04, 53.05, 53.06 and 53.07 (*see*, Proceedings, this chapter) must be met, and the summons must state that the purpose of the hearing is to consider a discretionary transfer to criminal court.

Family Code Sec. 54.02(c)(d)

The court will conduct a hearing without a jury to consider the transfer of the proceedings to district court. Prior to the hearing, the court must order and obtain a complete diagnostic study, social evaluation, and full investigation of the child, his or her circumstances, and the circumstances of the alleged offense.

Family Code Sec. 54.02(g) Sec. 54.02(g-1) SB 1617 82nd Leg.

If the petition alleges multiple offenses arising out of the same transaction, the court must either retain or transfer all offenses arising out of the same transaction, except as provided by new Subsection (g-1). Pursuant to Subsection (g-1), a child may be subject to criminal prosecution for an offense committed under Chapter 19 or Section 49.08, Penal Code, if the offense arises out of a criminal transaction for which the juvenile court retained jurisdiction over other offenses relating to the criminal transaction and on or before the date the juvenile court retained jurisdiction, one or more of the elements of the offense under Chapter 19 or Section 49.08, Penal Code, had not occurred. The child cannot be subject to criminal prosecution at any time for any offense arising out of a transaction for which the juvenile court maintains jurisdiction. Once a matter has been transferred, the criminal court may not remand the child to the jurisdiction of the juvenile court.

Family Code Sec. 54.02(h)(i)

In its order transferring the case to a criminal court, the juvenile court must state its reasons for waiver and certify its action. Upon transfer, the child is dealt with as an adult and in accordance with the Code of Criminal Procedure. Once the matter is transferred, the

criminal court may not remand the child to the jurisdiction of the juvenile court. If the juvenile court orders a person detained in a certified juvenile detention facility under Subsection (h), the juvenile court shall set or deny bond for the person as required by the Code of Criminal Procedure and other law applicable to the pretrial detention of adults accused of criminal offenses.

3. Transfer to Constitutional County Court, Municipal Court or Justice Court - Truancy

Family Code Sec. 54.021 Sec. 54.02(b)

The juvenile court may waive its exclusive original jurisdiction in matters concerning violations of Section 51.03(b)(2) of the Family Code. These matters may be transferred to a constitutional county court, if the county has a population of 1.75 million or more, or to a municipal court or justice court. The juvenile court must have permission from the court to which the matter is being transferred before the transfer is made. The petition and notice requirements are the same as for transfers to criminal courts.

Educ. Code Sec. 25.094

Family Code Sec. 54.021(d) and (e)

Constitutional county, justice and municipal courts may also exercise jurisdiction in matters indicating a need for supervision if the juvenile court has waived its jurisdiction, and a complaint is filed under Section 25.094 of the Education Code. Costs assessed in a matter transferred to a constitutional county court under Education Code Section 25.093 or 25.094 must be the same as those for a case filed in justice court. If the case is before a constitutional county court, recording proceedings are the same as those in a municipal court of record.

CCP Art. 4.11 Art. 4.14 Art. 45.057 Art. 45.050

Municipal and justice courts have jurisdiction over juveniles in certain misdemeanor cases. No transfer from the juvenile court is necessary. An order under Article 45.057 is enforceable by contempt (*see*, Article 45.050).

Records for persons under the age of 17 prosecuted for fine-only misdemeanors (other than public intoxication) or violation of a penal ordinance of a political subdivision must be sealed in accordance with the procedures set forth in Family Code Section 58.003. This procedure is discussed in detail in Section D.2 below.

D. RECORDS

1. Confidentiality

Family Code Sec. 58.005

Records and files concerning a child, including personally identifiable information and information obtained for the purpose of diagnosis, examination, evaluation, or treatment or for making a referral for treatment of a child by a public or private agency or institution providing supervision of a child by arrangement of the juvenile court or having custody of the child under order of the juvenile court may be disclosed only to the following:

- The professional staff or consultants of the agency or institution
- The judge, probation officers, and professional staff of consultants of the juvenile court
- An attorney for the child
- A governmental agency if the disclosure is required or authorized by law
- A person or entity to whom the child is referred for treatment or services if the agency or institution disclosing the information has entered into a

written confidentiality agreement with the person or entity regarding the protection of the disclosed information

- The Texas Department of Criminal Justice and the Texas Juvenile Probation Commission for the purpose of maintaining statistical records of recidivism and for diagnosis and classification
- Any person, agency, or institution having a legitimate interest in the proceeding or in the work of the court, with the juvenile court's permission

The disclosure of information provisions discussed above do not apply to information collected for the Juvenile Justice Information System under Section 58.104 of the Family Code, which is discussed in section E below.

2. Sealing the Records

Family Code Sec. 58.003(a) Sec. 58.003(b)

The records of a child who has been found to have engaged in delinquent conduct or to have engaged in conduct indicating a need for supervision may be sealed. The child must submit an application to the court requesting the records be sealed; see requirements of application under subsection (p) below. (This also applies to a child taken into custody to determine if he or she has engaged in delinquent conduct or conduct indicating a need for supervision.) Two years must have elapsed since the final discharge, and the child may not have engaged in any further delinquent conduct, conduct indicating a need for supervision, nor have been convicted of a felony or misdemeanor involving moral turpitude. The court may NOT order the records sealed if the person has received a determinate sentence for engaging in delinquent conduct that violated a penal law enumerated in Family Code Section 53.045 or engaging in habitual felony conduct as described in Section 51.031.

Family Code Sec. 58.003(c) SB 407 HB2015 82nd Leg

SB 407 and HB 2015 from the 82nd Legislature made a number of changes to Section 58.003(c) of the Family Code. However, the bills made different changes to this subsection. Under 58.003(c)(1), the person must be 19 (rather than 21) years of age or older. Each of the bills created new Subsections (c-3) and (c-4) and each amended Subsection (d). Therefore, both new Subsections (c-3) and (c-4) will have to be considered and applied. Similarly, both amended versions of Subsection (d) will have to be considered and applied.

Family Code Sec. 58.003(c)

The records of a person adjudicated as having engaged in delinquent conduct that constituted a felony may only be sealed if the person is 19 or older; the person was not transferred to a criminal court; the records have not been used as evidence in the punishment phase of a criminal proceeding; and the person has not been convicted of a felony after becoming age 17.

HB 2862, SB 92, SB 1093, and SB 462 (83rd leg.)

In 2013 four bills were passed which amended some portion of Section 58.003. These bills are HB 2862, SB 92, SB 1093, and SB 462. The bills add subsections (c-7) and (c-8) which allow for the sealing of records in cases where the child successfully completes the Human Trafficking Program.

Family Code Sec. 58.003(d)

If no adjudication has taken place, the records may be sealed at any time. If the child is found to be not guilty at the adjudication hearing, the court will immediately order the records sealed.

Family Code Sec. 58.003(e)(f)

A hearing will be held on the motion to seal the records, and proper notice must be given to the person making application or who is the subject of the records; the prosecuting attorney; the authority granting discharge if final discharge was from an institution or parole;

any public or private agency or institution having records; and the law enforcement agency having custody of files named in the application or motion. A copy of the sealing order must be sent to each agency or official named in the order.

Family Code Sec. 58.003(g)

On entry of an order sealing the records in a juvenile case:

- All law enforcement, prosecuting attorney, Clerk of court, and juvenile court records ordered sealed must be sent before the 61st day after the date the order is received to the court issuing the order.;
- All records of a public or private agency or institution ordered sealed must be sent before the 61st day after the date the order is received to the court issuing the order;
- All index references to the records ordered sealed must be deleted before the 61st day after the date the order is received, and verification of the deletion must be sent before the 61st day after the date of the deletion to the court issuing the order;
- The juvenile court, Clerk of court, prosecuting attorney, public or private agency or institution, and law enforcement officers and agencies must properly reply that no record exists with respect to the person on inquiry in any matter; and
- The adjudication must be vacated and the proceeding dismissed and treated for all purposes other than a subsequent capital prosecution, including the purpose of showing a prior finding of delinquent conduct, as if it had never occurred.

Family Code Sec. 58.003(g-1)

Statistical data collected or maintained by the Texas Juvenile Justice Department, including statistical data submitted under Section 141.044 of the Human Resources Code, is NOT subject to a sealing order issued under Section 58.003.

Family Code Sec. 58.003(h)

Inspection of the sealed records may be permitted by an order of the juvenile court on the petition of the person who is the subject of the records and only by those persons named in the order.

Family Code Sec. 58.003(l)

On the motion of a person in whose name records are kept or on the court's own motion, the court may order the destruction of records that have been sealed if the records relate to conduct that did not violate a penal law of the grade of felony or a misdemeanor punishable by confinement in jail; five years have elapsed since the person's 16th birthday; and the person has not been convicted of a felony.

Family Code Sec. 58.003(n)

A record created or maintained under Chapter 62, Code of Criminal Procedure (sex offender registration records) may not be sealed if the person has a continuing duty to register under that chapter.

Family Code Sec. 58.003(o)

An agency or official named in the order that cannot seal the records because the information required under Family Code 58.003(p) is incorrect or insufficient must notify the court issuing the order before the 61st day after the date the agency or official receives the order. The court must notify the person who made the application or who is the subject of the records named in the motion, or the attorney for that person, before the 61st day after the date the court receives the notice that the agency or official cannot seal the records

because there is incorrect or insufficient information in the order.

Family Code Sec. 58.003(p)

The application to seal records is filed in a juvenile court in the county in which the proceedings occurred. The application and the order sealing the records must include all of the following information or an explanation of why the information is not included:

- Applicant's full name, sex, race or ethnicity, date of birth, driver's license or identification card number and social security number
- Offense charged
- Date on which the offense was alleged to have been committed
- County in which the offense was alleged to have been committed
- If a petition was filed in juvenile court, cause number assigned to the petition, and the court and county in which the petition was filed

3. Expunction of Records

CCP Art. 45.0216

SB 407 82 Leg.

SB 407 from the 82nd Legislature amended Article 45.0216 of the Code of Criminal Procedure by amending Subsections (b), (d), and (f) and by adding Subsection (f-1). It should be noted that the procedures for expunction provided under this article are separate and distinct from the expunction procedures under Chapter 55 of the Code of Criminal Procedure. Also, this article does not apply to any offense otherwise covered by Chapter 106 of the Alcoholic Beverage Code, Chapter 161 of the Health and Safety Code, or Section 25.094 of the Education Code. Records of a person under 17 years of age relating to a complaint dismissed as provided by Article 45.051 or 45.052 of the Code of Criminal Procedure may be expunged under this article.

CCP Art. 45.0216(b)

A person may apply to the court in which the person was convicted to have the conviction expunged as provided by Article 45.0216 on or after the person's 17th birthday.

CCP Art. 45.0216 (b)

The person may apply for expunction under this article if the person was convicted of not more than one offense described by Section 8.07(a) (4) or (5), Penal Code, while the person was a child or the person was convicted only once of an offense under Section 43.261, Penal Code.

CCP Art. 45.0216(e)

The judge of the trial court must inform the juvenile and any parent in open court of the juvenile's expunction rights and must provide a copy of Article 45.0216.

CCP Art. 45.0216(c)

To have a record expunged, the person must make a written request, which must be under oath.

CCP Art. 45.0216(d)

The request must contain the person's statement that the person was not convicted of any additional offense or found to have engaged in conduct indicating a need for supervision as described by Subsection (f)(1) or (2), as applicable.

CCP Art. 45.0216(f)

If the court finds the required statement contained in the request is accurate, the court will order the conviction, along with all records and documents relating to the offense, to be expunged.

CCP Art. 55.0216(f-1)

After entry of an order under Subsection (f), the person is released from all disabilities resulting from the conviction and the conviction may not be shown or made known for any purpose.

Justice and municipal courts must require a person requesting expunction under Code of Criminal Procedure Article 45.0216 to pay a fee of $30 to defray the cost of notifying state agencies of orders of expunction under this article.

CCP Art. 45.0216(i)

Except as noted above, records of cases for juveniles are subject to the same provisions regarding expunction as other cases.

4. Destruction of Records

The court will order the destruction of records relating to the conduct for which a child is taken into custody, including records contained in the juvenile justice information system, if the court determines that no probable cause exists to believe the child engaged in that particular conduct. Records are also to be destroyed if the matter is referred to a prosecutor, and the prosecutor determines there is no probable cause.

Family Code Sec. 58.006

The Clerk is responsible for the destruction of records subject to expunction orders. The Clerk must destroy the records no earlier than the 60th day or later than the first anniversary of the date the expunction order was issued, unless the person is the subject of an expunction order on the basis of an acquittal or an expunction order based on an entitlement under Article 55.01(d) of the Code of Criminal Procedure. (The Clerk obviously has no such duty if the records were released to the person who is the subject of the expunction order.) The Clerk must report the destruction of such files to the court.

CCP Art. 55.02, Sec. 5(d) and (e)

At least 30 days before the records are to be destroyed, the Clerk must notify the attorney for the state in the expunction proceeding. If the attorney objects to the records' destruction not later than the 20th day after receiving notice, the Clerk may not destroy records until the first anniversary, or the first business day following the first anniversary, of the date the expunction order was issued.

CCP Art. 55.02 Sec. (5)(d-1)

Destruction of the physical records and files in closed juvenile cases is detailed in Family Code Section 58.0071. The custodian of the physical records - in many cases, the custodian is the Clerk - may destroy the physical files and records if the information is duplicated in an electronic storage media. Depending on the allegations that were before the juvenile court, physical records may be destroyed when the respondent child is 18, 21 or 31 years old.

Family Code Sec. 58.0071

5. Inspection of Records and Dissemination of Information

Section 58.007 of the Family Code deals with physical records other than the information contained in the Juvenile Justice Information System (Subchapter B, Chapter 58, Family Code). Common examples would be offense or incident reports, witness statements and lab reports. Such records must be maintained in paper or electronic format on a local basis and must be kept separate from adult files and records. Motor vehicle records and municipal or justice court records of criminal cases involving juveniles are not subject to the confidentiality requirements of this section. Additionally, sex offender records maintained under Chapter 62 of the Code of Criminal Procedure are also excluded under this law.

Family Code Sec. 58.007

Except as provided by Article 15.27 of the Code of Criminal Procedure, the records and files of a juvenile court, a Clerk of court, a juvenile probation department, or a prosecuting attorney relating to a child who is a party to a proceeding under Title 3 (Chapters

HB 2862 (83rd Leg.)

51-61) of the Family Code are open to inspection and copying only by:

- the judge, probation officers, and professional staff or consultants of the juvenile court;
- a juvenile justice agency as that term is defined by Section 58.101, Family Code;
- an attorney for a party to the proceeding;
- a public or private agency or institution providing supervision of the child by arrangement of the juvenile court, or having custody of the child under juvenile court order; or
- with leave of the juvenile court, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

Family Code Sec. 58.007(g)

A prosecuting attorney may obtain the record of a juvenile defendant's adjudication to offer it as evidence that is admissible under article 37.07, Sec. 3(a) of the Code of Criminal Procedure in the punishment phase of a criminal proceeding by submitting a request to the juvenile court.

Family Code Sec. 58.007(h)

The juvenile court may disseminate to the public the following information relating to a child who is the subject of a directive to apprehend or a warrant of arrest and who cannot be located for the purpose of apprehension:

- Child's name, including other names by which the child is known
- Child's physical description, including sex, weight, height, race, ethnicity, eye color, hair color, scars, marks, and tattoos
- Photograph of the child
- Description of the conduct the child is alleged to have committed, including the level and degree of the alleged offense

Family Code Sec. 58.0072

Information collected and maintained by the Texas Juvenile Probation Commission for statistical and research purposes is confidential. It may not be disseminated by the Commission, except to certain entities for research purposes. It may also be disseminated for legislative purposes under Government Code Section 552.008.

No information in identifiable form may be released except to a criminal justice agency, the Texas Education Agency, an agency under the authority of the Health and Human Services Commission, a university, or an agency which has an agreement with the Commission detailing and restricting the use of the information. ("Identifiable form" means information that contains a juvenile's name or other personal identifiers which can be interpreted as referring to a specific juvenile offender.)

The Commission is not required to release or disclose juvenile justice information to any person not identified by this section.

6. Restricted Access

Family Code Sec. 58.201 et seq.

Subchapter C, Title 3, Family Code, *Automatic Restriction of Access to Records*, provides for the automatic restriction of access to records for certain juvenile offenders. When a record is placed on restricted access, it is not destroyed or sealed. Access to the record is restricted to criminal justice agencies for a criminal justice purpose. Therefore, it is

important to recognize the distinctions between this process and the sealing provisions which are discussed elsewhere. Sex offender registration records, criminal combination or criminal street gang records, and records of indeterminate sentence or adult certification cases are exempt from automatic restriction of access to records.

Family Code Sec. 58.203

Juvenile case records are subject to automatic restriction of access if:

- the person is at least 17 years old;
- the juvenile case did not include conduct resulting in determinate sentence proceedings in the juvenile court under Section 53.045; and

HB 2862 (83rd Leg.)

- the juvenile case was not certified for trial in criminal court under Section 54.02.

Family Code Sec. 58.209(a)(6) HB 2862 (83rd Leg.)

After the above conditions are met, restricted access occurs automatically when the person reaches age 17 unless the child is under the jurisdiction of the juvenile court or the Texas Juvenile Justice department on or after the child's 17th birthday in which case the law regarding restricted access will not apply until the person is discharged from the jurisdiction of the court or department, as appropriate. No further action is required on the part of the person subject to the records.

Family Code Sec. 58.204

Gov't Code Sec. 411.082

SB 1044 (83rd Leg.)

Records on restricted access may only be disclosed by the Department of Public Safety to a criminal justice agency for a criminal justice purpose as those terms are defined by Section 411.082 of the Government Code or to the Texas Youth Commission, the Texas Juvenile Probation Commission, or the Criminal Justice Policy Council for research purposes. In 2013, Section 411.082 of the Government Code was amended by Senate Bill 1044. The changes relate to allowing access to criminal history record information by the office of capital writs, public defender's offices and certain local government corporations.

Family Code Sec. 58.207

Family Code Sec. 58.204(b)

HB 2862 and HB 694 (83rd Leg.)

Section 58.207 allows the juvenile court to order that certain records relating to a juvenile case may be accessed under stipulated conditions to the same persons or agencies that DPS is authorized to allow access. When the agency maintaining the record receives the court order, the agency is authorized to allow access only under certain circumstances (e.g., by a criminal justice agency for a criminal justice purpose and for research purposes). In 2013, Sections 58.204 and 58.207 were amended by HB 2862 and HB 694. The changes primarily deal with allowing state and United States military forces and recruiters to access juvenile records so long as they have the written permission of the subject of the records. Otherwise, the agency is authorized to state that the records do not exist.

Family Code Sec. 58.205 Sec. 58.206

Sections 58.205 and 58.206 set forth requirements relating to certification, restriction return and deletion of a juvenile's records by certain agencies, persons, or courts. Unless specific circumstances set forth in these sections exist, the person may state the records do not exist. A person who is the subject of records to which access is restricted may not waive the restricted status of the records or the consequences of the restricted status.

Family Code Sec. 58.208 Sec. 58.209

Sections 58.208 and 58.209 set forth provisions that, under specific conditions, certain officials are required to inform a child or the child's appropriate guardian or parent of issues related to the access of the child's juvenile record. The child can receive notification of an action restricting access to the child's records if the child provides a current address to the juvenile probation department before his or her 17th birthday. The Texas Youth Commission and the Texas Juvenile Probation Commission are required to adopt rules to implement these provisions and facilitates the effective explanation of the access to a

juvenile's records.

Restricted access does not prevent or restrict the sealing or destruction of juvenile records as authorized by law.

Family Code Sec. 58.210

Restricted access to a juvenile record may be rescinded if the Department of Public Safety receives information through its criminal history system that:

Family Code Sec. 58.211(a)

- The subject of the restricted records has been convicted of a felony or a misdemeanor punishable by confinement in jail, and
- The offense was committed after the subject turned 17.

DPS will notify the appropriate local juvenile probation departments, as provided in Family Code Section 58.203, that the records are no longer subject to restricted access.

On receipt of notification, the juvenile probation department will notify the affected agencies (*see*, Family Code Section 58.207(b)) that the person's records are no longer subject to restricted access.

Family Code Sec. 58.211(b)

7. Local Juvenile Justice Information Systems

Subchapter D, Title 3 of the Family Code, *Local Juvenile Justice Information System*, describes local juvenile justice information systems. Sections 58.302 and 58.303 establish provisions for membership of a county in a regional or local system and for the creation of a jointly maintained system, as well as the type of information that may be contained in the system.

Family Code Sec. 58.301 et seq.

Section 58.305 provides that a local system, for single county and multi-county regions, include certain partner agencies within the county and the region. The bill also requires that governmental service providers and government placement facilities that are approved members be included as partner agencies within the local system of a multi-county region.

Family Code Sec. 58.305

Section 58.306 sets forth provisions relating to the level of access to information to which each partner agency in the system are entitled. Section 58.307 establishes the provisions relating to the confidentiality, destruction, sealing, or restricted access of information that is part of a system.

Family Code Sec. 58.306

8. Sex Offender Registration

Section 62.351 *et seq*. of the Code of Criminal Procedure sets forth provisions regarding hearings to determine the need for sex offender registration of a juvenile, the appeal of such a decision, and the judicial discretion to excuse compliance with the requirement.

CCP Art. 62.351

The court may defer a decision on whether registration is required pending completion of a treatment program. The treatment provider is required to notify the juvenile court and the prosecuting attorney within ten days of completion of the program. The court retains its discretion to require or excuse registration during the course of treatment. Registration is excused following successful completion of a treatment program; however, the attorney representing the state may file a motion requesting registration be required in the interest of the public. The court will hold a hearing and make a determination.

CCP Art. 62.352(b)(c)

A person may file a motion seeking to be excused from registration or seeking an order that the registration be nonpublic. If the motion is granted, the Clerk is required to send a copy of the order by certified mail, return receipt requested, to the Department of Public Safety and each local law enforcement agency that the person has proven to the court has registration information about him or her. The Clerk also sends notice to any public or private agency or organization that the court determines may have registration information pertaining to the person. The Clerk also must send a copy of the order to any other agency or organization designated by the person who is the subject of the order. The person provides the address(es) to the Clerk and pays a fee of $20 for each agency or organization designated.

CCP Art. 62.353

A recipient of such an order must either remove information regarding the person's registration or make it nonpublic within 30 days of the date of entry of the order. However, a public or private institution of higher education is not required to delete the sex offender registration information.

CCP Art. 62.353(h) and (i)

9. Temporary Custodial Investigations

Sections 58.0021 and 58.0022 of the Family Code were added to establish provisions regarding a law enforcement officer who takes a child temporarily into custody to take the child's fingerprints or photograph for comparison in an investigation. This section also provides procedures for the destruction of fingerprints and photographs and an audit to verify the destruction. A law enforcement officer is only allowed to obtain fingerprints or photographs from a child at a juvenile processing office or at a location that affords reasonable privacy to the child.

Family Code Sec. 58.0021 Sec. 58.0022

E. REPORTING TO THE DEPARTMENT OF PUBLIC SAFETY

The Texas Department of Public Safety ("DPS") is responsible for recording data and maintaining a database for a computerized juvenile justice information system.

A Clerk of a juvenile court must do all of the following:

Family Code Sec. 58.108

- Compile and maintain records needed for reporting data required by DPS.
- Transmit to DPS in the manner provided by DPS data required by DPS.
- Give DPS or its accredited agents access to the agency or court for the purpose of inspection to determine the completeness and accuracy of data reported.
- Cooperate with DPS to enable DPS to perform its duties.

A Clerk of a court must retain the documents described by section 58.108 of the Family Code, needed to report data required by DPS.

Family Code Sec. 58.108(b)

DPS by rule will develop reporting procedures that ensure that the juvenile offender processing data is reported from the time a juvenile offender is initially taken into custody, detained, or referred until the time a juvenile offender is released from the jurisdiction of the juvenile justice system.

Family Code Sec. 58.110(a) See also 37 TAC 27.51-27.64

The Clerk of the court exercising jurisdiction over a juvenile offender's case will report the disposition of the case to DPS. In 2013 Section 58.110(c), Family Code, was

Family Code Sec. 58.110(c)

amended to remove the provision which made violating the reporting requirement by a Clerk a Class C misdemeanor offense.

HB 1435 (83rd Leg.)

In each county, the reporting agencies may make alternative arrangements for reporting the required information, including combined reporting or electronic reporting, if the alternative reporting is approved by the Juvenile Board and DPS.

Family Code Sec. 58.110(d)

Except as otherwise required by applicable state laws or regulations, information required to be reported to DPS must be reported promptly. The information will be reported not later than the 30th day after the date the information is received by the agency responsible for reporting the information, except that a juvenile offender's custody, detention, or referral without previous custody must be reported to DPS not later than the seventh day after the date of the custody, detention, or referral.

Family Code Sec. 58.110(e)

Subject to available telecommunications capacity, DPS must develop the capability to receive by electronic means the information required under this section to be reported to DPS. The information must be in a form that is compatible to the form required of data to be reported under this section.

Family Code Sec. 58.110(f)

F. OTHER LAWS

Many changes to laws affecting juveniles were passed by the 79th Legislature. Some of the these laws, not covered elsewhere in this chapter, include:

- Chapter 60 of the Family Code was amended to adopt a new Interstate Compact for Juveniles. It addresses the return of youths to their home states when they have run away or escaped from custody; probation, parole supervision and other services provided to juveniles whose families have moved to another state; and the return to a requesting state of a juvenile who has committed a crime.
- Family Code Sections 51.07-51.075 were amended to abolish "courtesy supervision" and implement mandatory supervision for children under court supervision who move from one county to another.
- Family Code Section 51.095 was amended to authorize a magistrate who is giving juvenile warnings for a videotaped interrogation to require a law enforcement officer to return the child and the videotape to the magistrate for a determination that a statement was given voluntarily.
- Section 52.01 of the Family Code now authorizes a probation officer to take a child into custody for violation of a condition of release; a directive to apprehend is no longer required.
- Section 61.081, Human Resources Code, authorizes the Texas Youth Commission to release on parole, without juvenile court approval, a youth when nine months remain on his or her determinate sentence.
- Penal Code Section 22.04 was amended to provide an affirmative defense to the charge of injury to a child; the juvenile charged can now assert that he or she was no more than three years older than the alleged victim.
- It is now a third degree felony to possess prohibited substances and items (alcohol, drugs, weapons, etc.) in secure juvenile facilities and on Texas Youth Commission property; Penal Code Section 38.11.

- Under amended Article 45.051, Code of Criminal Procedure, a judge must require a person younger than 25 who is charged with a moving violation to complete a driving safety course approved by the Texas Education Agency, or an examination administered by the DPS. A $10 examination fee, to be used by the DPS for the administration of Transportation Code Chapter 521, is required.
- Code of Criminal Procedure Article 45.056 was amended in 2003 to provide for case managers in all juvenile cases. It was amended in 2005 to allow justice or county courts, with approval or the commissioners court, and municipal courts, with approval of the city council, to employ full-time case managers. The 2005 amendment also provides that case managers' primary duties will be cases brought under Sections 25.093 and 24.094 of the Education Code (non-attendance at school).

Chapter 61, *Rights and Responsibilities of Parents and Other Eligible Persons*, was added to the Family Code by the 78th Legislature (2003). There are few new Clerks' duties, but all Clerks whose courts handle juvenile law matters should be familiar with the provisions in Chapter 61. A brief summary of the three subchapters follows.

Family Code Sec. 61.001-61.004

Subchapter A, *Entry of Orders Against Parents and Other Eligible Persons*, defines circumstances in which a "juvenile court order" will be entered against the parent or other responsible adult. A "juvenile court order" is defined as an order by a juvenile court requiring a parent or other eligible person (e.g., a guardian) to act or refrain from acting. For example, a parent may be ordered to pay probation fees, restitution or court costs. A parent may also be ordered to participate in counseling or to refrain from doing any act injurious to a particular child's welfare. (The list of potential juvenile court orders is set out in Section 61.002.) The parent or other adult must be provided notice of the proposed order, and must be given an opportunity to be heard concerning it. A parent or other adult may appeal the order as in other civil cases.

Section 61.0031 was added by the 79th Legislature (2005). It concerns the transfer of an order, as described above, to the county of the child's residence.

Family Code Sec. 61.051 – 61.057

Subchapter B, *Enforcement of Order Against Parent of Other Eligible Person*, details the procedures for enforcing juvenile court orders, and remedies for contempt. A motion to enforce is filed, and a hearing is set. The court is required to issue a written notice, served by personal service or certified mail, of the hearing on the motion to enforce. If incarceration is a possible punishment upon the motion being granted, the court must also inform the person who is subject to the motion to enforce of his or her right to an attorney. An indigent person must also be informed or his or her right to have an attorney appointed, and the court must appoint an attorney if the person so requests. Punishment on a finding of contempt in an enforcement proceeding can include up to six months in jail or a fine of up to $500, or both.

Family Code Sec. 61.101 – 61.107

Subchapter C, *Rights of Parents*, sets forth the right of parents in connection with procedures in juvenile court. Parents have the right to be informed of proceedings, the right of access to their child, and the right to make written and oral statements concerning the matter in juvenile court. The failure to exercise any of these rights may not be used as a ground for appeal, for a post-adjudication writ of habeas corpus, or exclusion of evidence against the child in any proceeding.

CHAPTER 14

REQUESTS FOR RECORDS

A. INTRODUCTION

County Clerks will often receive requests to inspect or copy records. The law that applies to requests for records depends on the type of record that is requested. County Clerks hold two types of records: Court case records and public records. Because each type is sometimes handled differently, they are discussed separately in this chapter.

Open Government Training. Elected and appointed officials are required to complete Open Government Training not later than 90 days after taking the oath of office or assuming the duties of the office.

Gov't Code Sec. 552.012

More information, including frequently asked questions and resource materials, can be obtained from the Open Government section of the Attorney General's website at: https://www.texasattorneygeneral.gov/og/open-government-related-publications.

B. REQUESTS FOR COURT CASE RECORDS

County Clerks frequently receive requests for records related to proceedings in the courts they serve. For example, a Clerk may receive a request to see the file in a probate case. Another possible request might be for a copy of an information (the charging instrument) in a criminal misdemeanor case. Or, a Clerk may receive a request to inspect the entire file in a particular mental health matter. The requests a Clerk may receive for court case records are as wide and varied as the universe of documents that may be filed in any court proceeding handled by a county-level court.

A County Clerk holds court case records on behalf of the judges of the courts served by the Clerk. Therefore, court case records maintained by County Clerks are records of the judiciary.

A.G. Op. DM-166 (1992) H-826 (1976)

The Public Information Act (PIA) does not apply to records of the judiciary. The Texas Legislature has expressly excluded the judiciary and its records from the PIA. Accordingly, when dealing with a request for court case records, County Clerks need not concern themselves with the PIA. The PIA simply is not relevant to a request for court case records.

Gov't Code Sec. 552.003(1)(B)

Similarly, Rule 12 of the Texas Rules of Judicial Administration does not apply to court case records. Rule 12 deals only with public access to "judicial records." Like court case records, judicial records are records of the judiciary. But the two types of records are entirely separate. A record cannot be both a court case record and a judicial record. A judicial record is a record made or maintained by or for a court in its regular course of business but not pertaining to its adjudicative function. A record that is filed in connection with any matter that is or has been before a court would be a record pertaining to a court's adjudicative function and would not be a judicial record. Examples of judicial records might include a judge's calendar, a court's security plan and written materials obtained in connection with an educational seminar.

TRJA Rule 12.2(d)

> ***NOTE:*** *Judicial records are almost always maintained by judges themselves and not by Clerks. If a County Clerk receives a request for a judicial record, the Clerk should refer the*

requestor to the relevant judge.

Correspondingly, a judge may receive a request for court case records. Because court case records are maintained by Clerks, the judge should refer the person making such a request to the Clerk.

Gov't Code Sec. 552.0035

The fact that neither the PIA nor Rule 12 apply to requests for court case records does not mean there are no laws controlling requests for court case records.

Many *statutes* address the right of access to court case records.

Public access to certain court case records is also controlled by *judicial rules* such as the Texas Rules of Civil Procedure.

If there are no applicable statutes or rules regarding the release of a particular type of court case record, then access to such a record is controlled by *common law*.

1. General Rule – Court Case Records are Open to the Public

a. Statutes Controlling Access to Court Case Records

Local Gov't Code Sec. 191.006

The general rule regarding access to court case records maintained by the County Clerk is that the records are open and are to be accessible by the public. This general rule is set out in Section 191.006 of the Local Government Code as follows:

All records belonging to the office of the County Clerk to which access is not otherwise restricted by law or by court order shall be open to the public at all reasonable times. A member of the public may make a copy of any of the records.

A.G. ORD 274 (1981)

Records maintained by the County Clerk on behalf of the judiciary are considered to be records belonging to the office of the County Clerk for purposes of this statute.

Local Gov't Code Sec. 118.065 Sec. 118.051, et seq.

Additionally, Section 118.065 provides that a "person is entitled to read, examine, and copy from" documents referred to in Subchapter C of Chapter 118 of the Local Government Code. That subchapter makes reference to all documents in civil court actions and probate court actions filed with the County Clerk. The term "documents" is defined to include "any microfilm or other photographic image of the documents."

CCP Art. 15.26 Art. 18.01

Some statutes serve to make particular types of documents public information. The Texas Legislature has specifically stated that arrest warrants and affidavits in support thereof are "public information." The Clerk or the magistrate who issued the arrest warrant is required to make a copy of both the warrant and the supporting affidavit available for public inspection.

The statute does not say that search warrants themselves are public information, but search warrants may be accessible under other law.

CCP Art. 45.018

The Code of Criminal Procedure specifically states that the defendant in a criminal case is entitled to notice of a complaint (defined as "a sworn allegation charging the accused with the commission of a crime") not later than the day before the date of any proceeding in the prosecution of the defendant under the complaint.

CCP Art. 42.12, Sec. 5(f)

The fact that a criminal defendant is granted deferred adjudication does not serve to make his or her criminal file confidential. Rather, the Code of Criminal Procedure affirmatively states that "[a] record in the custody of the court Clerk regarding a case in

which a person is granted deferred adjudication is not confidential."

Papers and records in proceedings to adjudicate parentage (*i.e.*, paternity suits) are available for public inspection.

Family Code Sec. 160.633

b. Court Rules Controlling Access to Court Case Records

Rule 76a of the Texas Rules of Civil Procedure states that court case records filed in connection with any matter (other than documents filed in actions originally arising under the Family Code, documents filed with a court in camera solely for the purpose of obtaining a ruling on their discoverability, and documents to which access is otherwise restricted by law) before any civil court are presumed to be open.

TRCP 76a

ClearChannel Communications v. United States Auto Ass'n, No. 04-04-00724-CV, slip op, 2006 Tex App LEXIS 7 (Tex. App.-San Antonio, Jan. 4, 2006, no pet. h.)

This presumption may be overcome, and the court case records may accordingly be sealed, only in certain limited situations in which the judge finds that (1) a specific, serious and substantial interest clearly outweighs the presumption of openness and any probable adverse effect that sealing will have upon the general public health or safety; and (2) no less restrictive means than sealing records will adequately and effectively protect the specific interest asserted. The sealing of court records without compliance with Rule 76a is improper.

Attorneys have a special right of access to the records of cases in which they are involved. Rule 76 of the Texas Rules of Civil Procedure states that "each attorney at law practicing in any court shall be allowed at all reasonable times to inspect the papers and records relating to any suit or other matter in which he may be interested."

TRCP 76

c. Common Law Principles Controlling Access to Court Records

In the absence of a statute or court rule, access to court case records is controlled by common law. The United States Supreme Court has observed that the courts of this country recognize a general right to inspect and copy court case records. The right is not absolute, however. The public's right to inspect and copy court case records is subject to the court's inherent power to control access to its records. But a court's power to limit access to its records ends when the court no longer has jurisdiction over the particular case.

AG Op. DM-166 (1992)

Nixon v. Warner Communications, 435 U.S. 589 (1978)

Ashpole v. Millard, 778 S.W. 2d 169 (Tex. App. – Houston [1st Dist.] 1989, no writ

2. Exceptions to the General Rule that Court Case Records are Open

There are a number of statutes that serve to restrict public access to court case records. As noted in Local Government Code, Section 191.006, a law that restricts public access to a particular record will prevail over the general rule that all records belonging to the County Clerk are open. A law restricting public access will also prevail over the general law set out in Section 118.065. Rule 76a specifically states that the court records presumed to be open do not include "documents in court files to which access is otherwise restricted by law." The laws which serve to create "exceptions" to the general rule of openness are delineated below.

Local Gov't Code Sec. 191.006

TRCP 76a

a. Mental Health Proceedings

Records in mental health proceedings (including docket books, indexes and judgment books) that are maintained in the County Clerk's office are termed "public

Health & Safety Code Sec. 571.015

record[s] of a private nature." The general rule is that these records may be inspected or copied only pursuant to court order. This means that even a person who is the subject of a mental health proceeding may not access his or her court file absent a court order.

There is, however, an exception to the general rule requiring a court order to access mental health records. Mental health papers may be accessed by an attorney representing the proposed patient.

b. Juvenile Case Records

Family Code Sec. 58.007 HB 2862 (83rd Leg.)

The records of a child who is a party to a proceeding under Title 3 of the Family Code (*i.e.*, juvenile case records) are open to inspection or copying only by the following:

- the judge, probation officers, and professional staff or consultants of the juvenile court;
- a juvenile justice agency (*i.e.*, an agency that has custody or control over juvenile offenders);
- an attorney for a party to the proceeding;
- a public or private agency or institution providing supervision of the child by arrangement of the juvenile court, or having custody of the child under juvenile court order; or
- with leave of the juvenile court, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

Family Code Sec. 58.0072

Similarly, information collected and maintained by the Texas Juvenile Justice Department for statistical and research purposes is confidential. (While this does not directly relate to Clerks' duties, the Clerks should be aware of laws that govern release of similar information by other entities.) It may not be disclosed or disseminated by the Commission, except as detailed below.

Family Code Sec. 58.0072(c)

Access may be granted to the following for research and statistical purposes:

- criminal justice agencies;
- the Texas Education Agency;
- any agency under the authority of the Health & Human Services Commission; or
- a public or private university.

Family Code Sec. 58.0072(d) Sec. 58.0072(e) Sec. 58.0072(g)

Access may be granted only for a purpose approved by the Department to persons working on research or statistical project or to a governmental entity subject to an agreement with the Department. The Department shall grant access for legislative purposes.

Family Code Sec. 58.0072(f)

The Department may not release juvenile justice information in any form that contains a juvenile offender's name or otherwise identifies or may be reasonably interpreted to identify a particular juvenile. The only exceptions are information provided to criminal justice agencies, the Texas Education Agency, Health & Human Services Commission agencies, or governmental entities under agreement with the Department.

Family Code Sec. 58.003(h)

If a court orders that the records in a particular juvenile case are to be sealed, the records are open to inspection only upon an order of the juvenile court and are to be inspected only by those persons named in the order.

NOTE: *Statistical data collected by the Texas Juvenile Justice Department is not subject to a sealing order under Family Code Section 58.003.*

Family Code Sec. 58.003(g-1) HB 2862 (83rd Leg.)

NOTE: *Family Code Section 58.003 was amended in 2009 by adding Subsections (c-1) and (c-2) and by amending Subsections (d) and (e). These changes all involve some aspect of the sealing of a child's records.*

Family Code Sec. 58.203

In certain circumstances, the Department of Public Safety will certify to the juvenile probation department that the records relating to a person's juvenile case are subject to "automatic restriction of access." In 2011, HB 961 from the 82nd Legislature amended Family Code Section 58.203(a) by lowering the age specified in Section 58.203(a)(1) from 21 to 17, and by eliminating Subsection (4). In 2013, HB 2862 further amended Section 58.203. In order to be eligible for restricted access, the subject must be 17, must not have been adjudicated under the determinate sentence act or have been certified to criminal court.

Family Code Sec. 58.204

Family Code Section 58.204 was amended during the 2013 83rd legislature by two bills – HB 694 and HB 2862. These bills do not make the same changes to the statute and do not go into effect at the same time.

HB 694 (83rd Leg.)

The amendment made by HB 694 became effective on June 14, 2013. A new subsection (b)(3) was added which provides that the Texas Juvenile Justice Department may permit access to the information which is in the juvenile justice information system to military personnel, including a recruiter, of this state or the United States if the individual is an applicant for enlistment in the armed forces and with the written permission of the individual.

HB 2862 (83rd Leg.)

The amendments made by HB 2862 became effective on September 1, 2013. These amendments added new Subsections (b)(3), (b)(4), and (b)(5). The new subsections provide additional circumstances in which the Texas Juvenile Justice Department may permit access to the information in the juvenile justice information system relating to the case of an individual.

Family Code Section 58.207 was also amended during the 2013 83rd Legislature by HB 694 and HB 2862. The bills do not make the same changes to the statute and do not go into effect at the same time.

HB 694 adds a new subsection (c) which provides that, not withstanding Subsection (b) of this section and Section 58.206(b), with the written permission of the subject of the records, an agency under Subsection (a)(1) may allow military personnel, including a recruiter, of this state or the United States to access juvenile records in the same manner authorized by law for records to which access has not been restricted under this section.

HB 2862 adds new subsections (c) and (d). Subsection (c) states that Subsection (b) does not apply if the subject of an order issued under Subsection (a)(1) is under the jurisdiction of the juvenile court or the Texas Juvenile Justice Department or the agency has received notice that the records are not subject to restricted access under Section 58.211. Subsection (d) states that, notwithstanding Subsection (b) and Section 58.206(b), with the permission of the subject of the records, an agency listed in Subsection (a)(1) may permit the state military forces or the United States military forces to have access to juvenile records held by that agency. On receipt of a request from the state military force

or the United States military forces, an agency may provide access to juvenile records that have not been restricted under subsection (a).

Upon receiving such a certification, the juvenile probation department shall order that records maintained by the Clerk of the juvenile court may only be accessed:

- by a criminal justice agency for a criminal justice purpose, as those terms are defined by Section 411.082, Government Code; and
- for research purposes, by the Texas Juvenile Justice Department.

Family Code Sec. 58.204

Accordingly, Clerks are to follow the court's order and allow access only as detailed immediately above. If a juvenile court serves more than one county, the certification is issued to each juvenile probation department that serves the court.

Family Code Sec. 58.210

NOTE: *The automatic restriction of access described above is in addition to the sealing of juvenile records. A person who is the subject of records to which access has automatically been restricted is entitled to access to the records for the purpose of preparing and presenting a motion to seal or destroy the records.*

Family Code Sec. 58.211

NOTE: *Restricted access may be rescinded under certain circumstances. The Department of Public Safety notifies the juvenile probation department, which in turn is responsible for notifying the entities that maintain juvenile records, of the rescission.*

c. Juror Information Sheets in Criminal Cases

CCP Art. 35.29

SB 270 (83rd leg.)

Personal information about a person who serves as a juror in a criminal case such as the juror's address, telephone number, social security number, and driver's license number is confidential and may not be disclosed absent an order of the court in which the juror served. Senate Bill 270 amended the Code of Criminal Procedure to provide an exception to the prohibition against releasing personal information about a juror collected during the jury selection process by authorizing a defense counsel to disclose that information to successor counsel representing the same defendant in a habeas corpus proceeding in a death penalty case without application to the court or a showing of good cause.

d. Written Jury Summons Questionnaires

The information contained in a written jury summons questionnaire is confidential. The information contained in a completed questionnaire may be disclosed only to:

- a judge assigned to hear a cause of action in which the respondent to the questionnaire is a potential juror;
- court personnel; and
- a litigant and a litigant's attorney in a cause of action in which the respondent to the questionnaire is a potential juror.

Gov't Code Sec. 62.0132

e. Criminal History Records of Guardians

Probate Code Sec. 698

In guardianship cases, the County Clerk is required to obtain criminal history information from the Department of Public Safety (DPS) or the Federal Bureau of

Investigation (FBI) regarding the proposed guardian, unless the guardian is a family member or an attorney. A 2009 amendment to Section 411.1386 of the Government Code and to Section 698 of the Texas Probate Code provides that the Clerk is not required to obtain criminal history record information for a person who holds a certificate issued under Section 111.042 or a provisional certificate issued under Section 111.0421 if the Guardianship Certification Board conducted a criminal history check on the person before issuing or renewing the certificate. The Guardianship Certification Board must provide to the Clerk **if requested by the court** the criminal history record information that was obtained from the department or the Federal Bureau of Investigation. *See* Form XIV-1 Court's Request for Criminal History Report. The Clerk is also required to obtain criminal history information regarding employees of the private professional guardian or others who will represent the interests of a ward on behalf of the private professional guardian. A person may submit the required information to the Clerk not later than 10 days before a guardianship hearing. These criminal history records are for the exclusive use of the court and are privileged and confidential. The criminal history information may be released only pursuant to court order or the consent of the person being investigated.

Gov't Code Sec. 411.1386

SB 1057 81st Leg.

> ***NOTE:*** *The Clerk may destroy the criminal history information records after they have been used for their intended purposes. A person who releases or discloses these records without the proper authorization commits a Class A misdemeanor offense.*

g. Exceptions Applicable only in a County with a Population of 3.4 Million or More (Harris County)

If a county has a population of 3.4 million or more, the pleadings and documents filed in a court for the dissolution of marriage are confidential and may not be released to a person who is not a party to the suit until after the date of service of citation or the 31st day after the date of filing suit, whichever date is sooner.

Family Code Sec. 6.411

If a county has a population of 3.4 million or more, an application for a protective order is confidential and may not be released to a person who is not a respondent to the application until after the date of service of notice of the application or the date of the hearing on the application, whichever date is sooner.

Family Code Sec. 82.010

If a county has a population of 3.4 million or more, the pleadings and documents filed in a suit affecting the parent-child relationship are confidential and may not be released to a person who is not a party to the suit until after the date of service of citation or the 31st day after the date of filing the suit, whichever date is sooner.

Family Code Sec. 102.0086

h. Suits for Adoption

The records concerning a child maintained by the Clerk after entry of an order of adoption are confidential. No person may access the records except for good cause under an order of the court that issued the order of adoption.

Family Code Sec. 162.022

i. Sealed Records

Almost all civil court case records in cases that do not arise under the Family Code may be sealed in certain circumstances and pursuant to certain detailed procedures. Court orders themselves cannot be sealed, but certain information such as the identity of a sexual assault victim may be ordered to be redacted from an otherwise open judgment. Court records may be sealed only upon a party's written motion. The motion must be open to public inspection. A motion to seal records must be decided by written order. The written

TRCP 76a

Fox v. Anonymous, 869 S.W. 2d 499 (Tex. App.-San Antonio 1993, writ denied)

order is open to the public.

Courts may also seal records in certain cases originating under the Family Code. Specifically, courts may order the sealing of a file in a suit for termination of parental rights and in a suit requesting an adoption.

Family Code Sec. 162.021 and Sec. 161.210

Courts are required to seal records concerning orders issued under Chapter 144 of the Civil Practice and Remedies Code. (Chapter 144 deals with certain court orders dealing with particular former mental health patients.)

Civ. Prac. & Rem. Code Sec. 144.005

The law is silent as to the exact meaning of sealing a record. However, the general understanding appears to be that a judge's order that a Clerk seal a record requires something more than merely not making the record publicly accessible. The recommended practice is that the Clerk actually place a seal around the record or records in question and physically place the records in a special area. The physical seal is not to be broken until the records are ordered to be unsealed.

j. Parental Notification Case Records

As noted in Chapter 12, all court documents pertaining to a minor's application for judicial approval to undergo an abortion are confidential and privileged. Not only are the documents confidential but the Clerk may not divulge to anyone (except essential court personnel) that the minor was ever in the Clerk's office, was ever pregnant or ever sought to have an abortion. Even the disclosure of the particular trial court in which a proceeding was held is in violation of the rule of confidentiality.

Family Code Sec. 33.003(k)

SCR 1.3
SCR 1.4

In re Jane Doe, 19 S.W. 3d 249 (Texas 2000)

k. Forms and Information Provided to Clerk so that Interest Earned on Registry Funds can be Reported to the IRS

If any funds deposited into the court registry are placed into an interest-bearing account, any person with a taxable interest in the funds must submit appropriate tax forms and provide correct information to the Clerk so that the interest earned on such funds can be reported to the Internal Revenue Service. The information and forms provided to the Clerk are not subject to public disclosure except to the extent necessary to comply with federal tax law requirements.

Local Gov't Code Sec. 117.003

l. Certain Investment Information held by a Governmental Body

Most information regarding investments held by a governmental body are open to the public. This information includes:

Gov't Code Sec. 552.0225

- Name of a fund or investment entity;
- Date the fund or entity was established;
- Each date the governmental body invested in the fund or entity;
- Amount of the investment;
- Amount received from a fund or entity in connection with any investment;
- Rate of return;
- Amount of fees paid;
- Names of the managers of the fund or entity in which a governmental body has invested;
- Any recusal filed in connection with an investment;

- minutes of a governmental body's meeting in which investments were discussed; and
- Any annual ethics disclosure report submitted to the governmental body by the investment fund or entity.

Pre- and post-investment due diligence and activity regarding restricted securities are confidential. Generally, information that is not enumerated in Government Code Section 552.0225(b) may be withheld by a governmental entity.

Gov't.Code Sec. 552.143

NOTE: *Neither situation discussed above applies to the Texas Mutual Insurance Company.*

Gov't Code Sec. 552.225(c) Sec. 552.143(f)

C. REQUESTS FOR PUBLIC RECORDS

1. General Rule – Public Records are Open to the Public

One of the County Clerk's major responsibilities is to maintain public records and make those records available to the public. Manifestly, the public records maintained by the County Clerk are to be open to the public. As noted in this chapter's earlier discussion of court case records, Section 191.006 of the Local Government Code declares that "[a]ll records belonging to the office of the County Clerk to which access is not otherwise restricted by law or by court order are to be accessible by the public." This statute applies with equal force to public records.

Local Gov't Code Sec. 191.006

Public records held by the County Clerk are also generally available under the Public Information Act (PIA). As noted earlier in this chapter, the Public Information Act (PIA) does not apply to records of the judiciary. Accordingly, court case records maintained by County Clerks are not subject to the PIA. However, public records maintained by County Clerks are not records of the judiciary. Public access to these records is controlled by the PIA.

Gov't Code Sec. 552.002 Sec. 552.003 Sec. 552.021

Because a County Clerk's public records are subject to the PIA, exceptions contained within the PIA to its general rule of openness are also applicable to these records. Clerks must be familiar with these exceptions. The disclosure of confidential information to a person who is not authorized to receive that information is a misdemeanor offense constituting official misconduct.

Gov't Code Sec. 552.352

Deeds, mortgages and deeds of trust that are properly recorded in the proper county are "subject to inspection by the public."

Prop. Code Sec. 13.002

2. Exceptions to the General Rule that Public Records are Open to the Public

The idea that public records are open to the public is an intuitive truth. Conversely, the idea that certain public records are not open to the public runs counter to what intuition would lead one to expect. The fact is, however, that some public records are not open to the public. Exceptions to the general rule that public records are open to the public are detailed below.

a. Military Discharge Records

The County Clerk is to record the official discharge of persons who after 1915 have served as members of the United States armed forces, the United States armed forces reserve, or an armed forces auxiliary. These military records are often contained on a form known as a Department of Defense Form DD-214. If the military discharge record is first

Local Gov't Code Sec. 192.002

Gov't Code Sec. 552.140

recorded by the County Clerk (or first comes into the possession of the County Clerk or other governmental body) on or after September 1, 2003, then the discharge record is confidential for a period of 75 years after the date it is recorded. During the 75-year time period, the County Clerk may permit inspection or copying of the record by members of the general public only pursuant to court order. However, the following individuals may inspect the record and may obtain a free copy or free certified copy of the discharge record upon the presentation of proper identification:

- the veteran who is the subject of the record;
- the veteran's legal guardian;
- the veteran's spouse, child or parent;
- the veteran's closest living relative if the veteran has no living spouse, child or parent;
- the personal representative of the veteran's estate;
- the person named by any of the above persons in an appropriate power of attorney;
- another governmental body; or
- an authorized representative of the funeral home that assists with the burial of the veteran.

If the military discharge record first came into the possession of the County Clerk or other governmental body prior to September 1, 2003, then the Clerk is to make the record available to the general public. However, the veteran who is the subject of the military discharge record or the veteran's legal guardian may direct the County Clerk to destroy all copies of the record that the Clerk makes generally available to the public. The County Clerk must comply with such a directive within 15 business days after the directive is received.

b. Birth Records

Gov't Code Sec. 552.115

A birth record is public information but is not to be made available to the public until the 75th anniversary of the date of birth shown on the record. However, the Genealogical Society of Utah shall have access to birth records on or after the 50th anniversary of the date of birth shown on the record.

A birth record is to be made available to the chief executive officer of a home-rule municipality in certain situations.

c. Death Records

SB 1907 82nd Leg.

A death record is public information but is not to be made available to the public until the 55th anniversary of the date of death as shown on the death record.

A death record is to be made available to the chief executive officer of a home-rule municipality in certain situations.

D. REDACTION OF INFORMATION FROM RECORDS

Some laws prohibit the release of certain information as opposed to prohibiting the release of documents altogether. Thus, the Clerk is faced with two conflicting mandates – first, make the document available to the public but, second, don't release a particular item of information. The solution to this conflict is for the Clerk to redact the particular item of information from the document before making the document generally available. Usually, Clerks are not statutorily required to redact information from documents. However,

redaction appears to be the only way in which Clerks can meet both the requirement of making documents available to the public and the requirement of keeping certain information (such as social security numbers) confidential.

1. Redaction Process

To redact information from a document means to remove confidential references from a document. There is no specific statute detailing the proper method of redacting information from a document. The general and recommended practice, however, is to make a copy of the original document and remove the confidential references from the copy of the document. The original document is to remain unaltered.

The confidential references are usually removed from the copy of the document by blackening the areas of the copy in which the confidential references are situated. Sometimes the confidential references can still be ascertained even after the blackening of the relevant area of the document. If this is the case, a copy of the altered copy should be made so that the references definitely cannot be ascertained. The altered copy is the document that is presented to the requestor of the document in satisfaction of his or her request. The requestor does not view the original document.

2. Social Security Numbers

42 U.S.C. Sec. 405(c)(2)(viii)(1)

Federal law provides that social security numbers obtained or maintained by authorized persons are confidential and may not be disclosed. OCA has researched this issue and advises Clerks that they do not meet the statutory definition of "authorized persons" under federal law. Thus, the federal law does not appear to require Clerks to keep social security numbers confidential.

Gov't Code Sec. 552.147(a)

State law seems consistent with this. The PIA provides that the social security number of a living person is excepted from the requirement to disclose under the PIA. The PIA further states that a social security number is not confidential, however.

Gov't Code Sec. 552.147(c)

The PIA also allows a County Clerk to disclose a social security number "in the ordinary course of business" without becoming subject to allegations of misconduct or criminal or civil liability.

Gov't Code Sec. 552.147(d)

County Clerks may redact social security numbers of a living person and must redact all but the last four digits of the social security number if an individual or his or her representative requests redaction in writing.

3. Social Security Numbers on Marriage License Applications

Gov't Code Sec. 552.141

The social security number of an individual that is maintained by a County Clerk and that is on an application for a marriage license is confidential. If the County Clerk receives a request to access information in the marriage license application, the Clerk must redact the social security number from the application and release the remainder of the information in the application.

4. Social Security Numbers, Signatures and Other Information on Birth Certificates

Health & Safety Code Sec. 192.002

The social security numbers and signatures of the mother and father are not part of the legal birth certificate. Generally, the social security numbers and signatures must be redacted from the birth certificate. However, the social security numbers and signatures are to be made available to the agency administering the state's plan under Part D of Title IV

of the federal social security act and may be used and disseminated for the establishment and the enforcement of child support orders. The social security numbers must also be made available to the federal Social Security Administration or to a faculty member at a medical school, as that term is defined in Section 61.501 of the Texas Education Code, for statistical or medical research.

HB 3253 (83rd Leg.)

The section of the birth certificate entitled "For Medical and Health Use Only" is not part of the legal birth certificate. Information in that section of the birth certificate is confidential. The information contained in this area should be redacted from the document before a copy of the document is made. The information may not be released or made public on subpoena or otherwise, except that release may be made:

- for statistical purposes only so that no person, patient, or facility is identified;
- to medical personnel of a health care entity; or
- to appropriate state or federal agencies for statistical research.

5. Crime Victim Information Contained in Victim Impact Statements

In 2003, the Texas Legislature enacted Section 552.1325 of the Government Code which makes confidential certain information that is filed with a court and that is contained in a victim impact statement (or was submitted for purposes of preparing a victim impact statement). The name, social security number, address, and telephone number of a crime victim is confidential if it relates to a victim impact statement. Additionally, any other information that would identify or tend to identify a crime victim is not to be disclosed. Accordingly, any documents (not just victim impact statements) that contain this type of confidential information must have the confidential information redacted from the documents prior to any release of the documents.

Gov't Code Sec. 552.1325

6. E-Mail Addresses

The law described here applies only to public records and does not apply to court case records. An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body (including the County Clerk) is confidential. However, the e-mail address may be disclosed if the member of the public affirmatively assents to release of the e-mail address.

Gov't Code Sec. 552.137

An e-mail address is not confidential if the e-mail address is:

- provided by a person who has a contractual relationship with the governmental body or by the vendor's agent;
- provided by a vendor who seeks to contract with the governmental body or by the vendor's agent;
- contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided in the course of negotiating the terms of a contract or potential contract;
- provided on a letterhead, coversheet, printed document, or other document made available to the public; or
- Provided to a governmental body for the purpose of providing public comment on or receiving notices related to an application for a license as defined by Section 2001.003(2) of the Government Code or receiving orders or decisions from a governmental body.

The County Clerk may disclose an e-mail address to another governmental body or to a federal agency.

Any record that contains a confidential e-mail address must have the e-mail address redacted from the record before the record may be released to the public.

7. Biometric Identifiers

Gov't Code Sec. 560.001

A biometric identifier is a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry. A County Clerk who possesses an individual's biometric identifier, whether as part of a court case record or public record, may not disclose the identifier to another person unless:

- the individual consents to the disclosure;
- the disclosure is required or permitted by a federal statute or a Texas statute other than the Public Information Act; or
- the disclosure is made to a law enforcement agency for a law enforcement purpose.

Gov't Code Sec. 560.002

8. Protective Orders

Family Code Sec. 85.007

Generally, the information contained in protective orders is open to the public. However, in response to a request from the person protected by an order (or from a member of the family or household of the person protected by an order), the court may exclude from a protective order the address and telephone number of the following:

- a person protected by the order (in which case the order shall state the county in which the person resides);
- the place of employment or business of a person protected by the order; or
- the child-care facility or school a child protected by the order attends or in which the child resides.

If the court grants the request for confidentiality, the court will order the Clerk to strike the information from the public records of the court and maintain a confidential record of the information for use only by the court.

9. Order (Writ) of Withholding

Family Code Sec. 8.001 Sec. 8.152

An order (writ) of withholding is a document issued by the Clerk of a court and delivered to an employer, directing that earnings be withheld for payment of spousal maintenance. An order of withholding must state, among other things, the name, address and social security number of both the obligor and the obligee. Upon the request of an obligee, the court may exclude from an order of withholding the obligee's address and social security number if the obligee or a member of the obligee's family or household is a victim of family violence and is the subject of a protective order to which the obligor is also subject. If the court grants the obligee's request, the court shall order the Clerk to strike the address and social security number from the order of withholding and maintain a confidential record of the obligee's address and social security number to be used only by the court.

10. Real Property Records

Deeds and deeds of trust are subject to inspection by the public. These instruments

are not required to contain an individual's social security number, but, if they do, the Clerk has no duty to redact the social security number unless the individual has requested redaction under the PIA, Government Code sec. 552.147(d).

Prop. Code Sec. 11.008 (a)(b)(e)

A Clerk cannot be held criminally or civilly liable for disclosing an instrument or information like a social security number in an instrument if the disclosure was consistent with the PIA or another law.

Prop. Code Sec. 11.008 (g)

Clerks must post a notice in their office stating that deeds and deeds of trust are not required to contain a social security number or driver's license number and are public records available for review by the public.

Prop. Code Sec. 11.008(f)

All deeds and deeds of trust transferring an interest in real property must include a notice at the top of the document as follows:

Prop. Code Sec. 11.008(c)

> NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORDING: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENCE NUMBER

The Clerk may not reject an instrument presented for recording solely because it does not contain this notice.

Prop. Code Sec. 11.008(d)

E. RESPONDING TO RECORDS REQUESTS

The Public Information Act (PIA) details relevant procedures in responding to records requests. These procedures are directly relevant only to requests for records to which the PIA is applicable. However, the procedures also comprise a helpful (albeit not binding) guideline for responding to requests for records to which the PIA does not apply.

1. Time in which to Respond to Records Requests

a. Generally

In response to a request for records that are open to the public, the County Clerk is required to promptly produce the records. "Promptly" means as soon as possible under the circumstances, that is, within a reasonable time, without delay.

Gov't Code Sec. 552.221

If the requested records are unavailable at the time of the request because the record is in active use or in storage, the Clerk shall certify this fact in writing to the requestor and set a date and hour within a reasonable time when the records will be made available for inspection or duplication.

If the Clerk cannot produce public information for inspection or duplication within ten business days after the date the records are requested, the Clerk shall certify this fact in writing and shall set a date and hour within a reasonable time when the information will be available for inspection or duplication.

b. Financing Statements

The County Clerk's office is required to respond within two business days to the following requests for information:

Bus. & Com. Code Sec. 9.523

- Whether there is on file any financing statement that:
  - Designates a particular debtor;
  - Has not lapsed under Section 9.515 of the Business and Commerce Code with respect to all secured parties of record;
  - If the request so states, has lapsed under Section 9.515 and a record of which is maintained by the Clerk under Section 9.522(a) of the Business and Commerce Code;
  - The date and time of filing of each financing statement; and
  - The information provided in each financing statement.

2. Permissible Inquiries in Response to Records Requests

Gov't Code Sec. 552.222

In regard to requests for records, the County Clerk may not make any inquiry of a requestor except to establish proper identification or to clarify the request. If the information relates to a motor vehicle record, the officer for public information or the officer's agent may require the requestor to provide additional identifying information sufficient for the officer or the officer's agent to determine whether the requestor is eligible to receive the information under Chapter 730, Transportation Code. "Motor vehicle record" has the meaning assigned to that term by Section 730.003, Transportation Code.

If a large amount of information has been requested, the Clerk may discuss with the requestor how the scope of the request might be narrowed. The Clerk may not make inquiry as to the purpose for which the information will be used.

Gov't Code Sec. 552.223

The Clerk shall treat all requests for information uniformly without regard to the position or occupation of the requestor, the person on whose behalf the request is made, or the status of the individual as a member of the media.

These rules are also good guidelines for records that are considered open under other law or policies.

3. Time for Requestor to Examine Records

Gov't Code Sec. 552.226

A requestor must complete the examination of the requested information not later than the 10th business day after the date the Clerk makes the information available to the requestor. However, the requestor can request additional time to examine the records. The Clerk shall, within certain limits, grant these requests for additional time. If the requestor does not complete the examination within the 10 business days and does not request an extension of time, the request is considered withdrawn.

4. Providing Copies of Requested Records

Gov't Code Sec. 552.226 Sec. 552.228

A County Clerk is not to allow requestors to remove original records from the Clerk's office. But Clerks are required to provide suitable copies of requested records within a reasonable period of time following the request. A governmental body is not required to copy information onto a diskette or other material provided by the requestor but may use its own supplies.

If the requested information exists in an electronic or magnetic medium, the requestor may request a copy either on paper or in an electronic medium, such as on diskette or on magnetic tape. The Clerk shall provide a copy in the requested medium if:

- the Clerk has the technological ability to produce a copy of the requested information in the requested medium;
- the Clerk is not required to purchase any software or hardware to accommodate the request; and
- provision of a copy of the information will not violate the terms of any copyright agreement between the Clerk (or county) and a third body.

If the Clerk is unable to comply with a request to produce a copy of information in a requested medium, the Clerk shall provide a paper copy of the requested record or a copy in another medium that is acceptable to the requestor.

F. DENYING REQUESTS FOR RECORDS

Gov't Code Sec. 552.301

If the requested record is in writing and is a record to which the Public Information Act (PIA) applies and the County Clerk believes the record should be withheld from public disclosure pursuant to one of the exceptions listed in the PIA, then the Clerk must ask for a decision from the Texas Attorney General about whether the information is within one of the exceptions. The Clerk must ask for the Attorney General's decision and state the exceptions that are thought to apply within a reasonable time but not later than the 10th day after the date of receiving the written records request. If the Clerk asks for an Attorney General's opinion, the Clerk must provide to the requestor within a reasonable time but not later than the 10th business day after the date of receiving the written records request:

- a written statement that the Clerk wishes to withhold the requested information and has asked for a decision from the Attorney General about whether the information is within an exemption to public disclosure; and
- a copy of the Clerk's written communication to the Attorney General asking for the decision or, if the Clerk's written communication to the Attorney General discloses the requested information, a redacted copy of that written communication.

A Clerk who requests an Attorney General decision must, within a reasonable time but not later than the 15th business day after the date of receiving the written request, submit to the Attorney General:

- written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld;
- a copy of the written request for information;
- a signed statement as to the date the request for information was received by the governmental body or evidence sufficient to establish that date; and
- a copy of the specific information requested, or representative samples of the information if a voluminous amount of information was requested.

A copy of written comments, as discussed above, must be sent to the person who originally requested the information. If the comments disclose or contain the substance of the information requested, then the copy to the requestor must be redacted.

The Clerk must label the copy of the specific information, or of the representative samples, to indicate which exceptions apply to which parts of the copy.

While the Clerk makes the formal request for an Attorney General decision, a Clerk would be wise to consult with his or her County Attorney or Criminal District Attorney on formulating the request. In many circumstances, the County Attorney or the Criminal District Attorney will prepare the request on behalf of the Clerk.

The Clerk must release the requested information and, in most cases, may not request a determination from the attorney General if a determination was previously requested concerning the same information and the Attorney General or a court determined the information is public and not excepted from disclosure.

G. FEES IN CONNECTION WITH RECORDS REQUESTS

Gov't Code Sec. 552.265

The charge for providing a paper copy of records made by a County Clerk's office shall be the charge provided by Chapter 118 of the Local Government Code or other applicable law.

1. Fees for Copies of Records on Paper

a. Certified Copies Generally

Local Gov't Code Sec. 118.014

Often, County Clerks are asked to provide not only a copy of a particular record but a "certified copy" of the record. A certified copy is a duplicate of an original document that is certified by the County Clerk as an exact reproduction of the original document. The County Clerk certifies a document by placing the Clerk's certificate "on each page or part of a page" of the document.

Local Gov't Code Sec. 118.011

As noted in Chapter 2, the fee for applying the Clerk's certificate to the document is $5.00. There is also a fee of $1.00 for each page or part of a page of the document.

AG Op. JC-0292 (2000)

Thus, the charge for a certified copy of a one-page document would be $6.00. The charge for a six-page document would be $11.00. The charge for a ten-page document would be $15.00. The charge for a 500-page document would be $505.00.

The Clerk is not to charge any additional amount for labor, materials or overhead no matter how many pages are in the document. Labor costs and clerical preparation costs are included in the charges set out in the statutorily specified $1.00 per page charges (plus the $5.00 certification charge).

The fees for a certified copy are to be paid at the time the order for a certified copy is placed.

The fee does not apply to a certified copy of map records or condominium records. Nor does the fee apply to a certified document or license for which another statute prescribes a different fee.

b. Noncertified Copies Generally

AG Op. JC-0292 (2000)

The fee for issuing a noncertified copy of a record is $1.00 per page or part of a page.

Local Gov't Code Sec. 118.011 Sec. 118.0145

As is the case with certified copies, the Clerk is not to charge any additional amount for labor, materials or overhead. The fee must be paid at the time the order for the noncertified copy is placed. A County Clerk may waive or reduce the fee if the document involves a family law matter or is the record of a judgment in a misdemeanor case.

c. Certified Copy of a Birth Certificate or Death Certificate or Marriage License

See Chapter 8 – Vital Statistics

2. Fees for Copies of Records on a Format Other Than Paper

Local Gov't Code Sec. 118.011(e)

1 TAC §70.10

A County Clerk who provides a copy of a record on a format other than paper must charge a fee in accordance with Sections 552.231 and 552.262 of the Government Code. Section 552.262 states that the rules of the Attorney General shall prescribe the methods for computing the charges for providing copies of public information in electronic and other media. Those rules set out the following copy charges for non-standard media:

• diskette	$ 1.00
• magnetic tape	actual cost
• data cartridge	actual cost
• tape cartridge	actual cost
• CD	
Rewritable (CD-RW)	$ 1.00
Non-rewritable (CD-R)	$ 1.00
• Digital video disk (DVD)	$ 3.00
• JAZ drive	actual cost
• other electronic media	actual cost
• VHS video cassette	$ 2.50
• audio cassette	$ 1.00

These charges are to cover the cost of materials only. A County Clerk may charge for the personnel costs involved in processing the request for non-paper copies of records at a rate of $15 per hour per person. However, if the services of programming personnel were required to comply with the request, then those programming personnel charges should be billed at the rate of $28.50 per hour.

Whenever any personnel charge is applicable to a request for non-paper copies of records, the Clerk may also include direct and indirect overhead costs in the charges. These charges may cover such costs as depreciation of capital assets, rent, maintenance and repair, utilities and administrative overhead. The overhead charge should be computed at 20 percent of the charge made to cover any personnel costs associated with a particular request.

If the Clerk already has the requested information on microfiche or microfilm and has copies available for sale or distribution, the charge for a copy must not exceed the cost of its reproduction. If no copies are available and the information on the microfiche or microfilm can be released in its entirety, then the Clerk should make a copy of the microfiche or microfilm and should not exact a charge that is greater than the cost of reproduction. If the Clerk cannot reproduce microfiche or microfilm in-house, then the Clerk may charge the actual costs of having the reproduction made commercially.

The Clerk may also charge additional fees in connection with providing non-paper copies of requested documents such as remote document retrieval charges, computer resource charges, miscellaneous supplies charges, and postal or shipping expenses. The proper amounts of these charges are detailed in 1 TAC Sec.70.3.

A Clerk must request an exemption from the Attorney General in order to recover costs that are more than 25 percent higher than the standard charges set out above. The detailed procedures for requesting an exemption are delineated in the Texas Administrative Code.

1 TAC Sec. 70.4

3. No Fees for Inspection of Records

A person is entitled to read, examine and copy from the documents to which the public has access (after redaction) that are maintained by the County Clerk. This access is to be full and free. A person may execute this entitlement without paying any charge under the reasonable rules of the County Clerk at all reasonable times during the hours in which the Clerk's office is open to the public.

Local Gov't Code Sec. 118.024

The right to copy from documents in the County Clerk's office apparently includes the right of a person to use his or her own copy equipment. A Clerk may not require a person copying from the records to provide an indemnity bond or provide proof of insurance.

The Permian Report v. Lacy, 817 S.W. 2d 175 (Tex. App.-El Paso 1991, writ denied)

Clerks should pay particular attention to the provisions of Section 552.271 of the Government Code, especially if the request meets the criteria in Section 552.271(c) or (d).If a requested page contains confidential information that must be edited from the record before the information can be made available for inspection, the County Clerk may charge for the cost of making a photocopy of the page from which the confidential information must be edited. No charge other than the cost of the photocopy may be imposed.

Gov't Code Sec. 552.271

In response to a request to inspect information that exists in an electronic medium and that is not available directly on-line to the requestor, a charge may not be imposed for access to the information, unless complying with the request will require programming or manipulation of data.

Gov't Code Sec. 552.272

> ***NOTE:*** *The Texas Attorney General has determined that birth and death records that are accessible to the general public are not "open for persons to thumb through." Rather, the Clerks should provide copies of birth and death records to requestors.*

AG Op. DM-146 (1992)

4. Fee for Mental Health Background Check

The fee for a mental health background check for a license to carry a concealed weapon is not to exceed $2.00. The Clerk is to perform such a background check at the request of the Department of Public Safety.

Local Gov't Code Sec. 118.0217

5. Notification to Requestor if Charges Will Exceed $40.00

If a request for copies of records will result in a charge of more than $40.00 then the Clerk must provide the requestor with a written itemized statement detailing the estimated charges that will be imposed. If an alternative less costly way of viewing the records is available, the statement must include a notice that the requestor may contact the Clerk regarding the alternative method. The Clerk must inform the requestor (at a mail, fax or e-mail address provided by the requestor) that the requestor's request will be considered to be automatically withdrawn if the requestor does not respond in writing to the itemized statement and that the requestor may respond to the statement by delivering his or her written response to the Clerk by mail, fax, e-mail or in-person delivery.

Gov't Code Sec. 552.2615

A request is considered to have been withdrawn if the requestor does not respond in writing by informing the Clerk within ten business days after the statement is sent to the requestor that:

- the requestor will accept the estimated charges;
- the requestor is modifying the request in response to the itemized statement; or
- the requestor has sent a complaint to the attorney general alleging that the requestor has been overcharged for being provided with a copy of the public information.

If the County Clerk later determines, but before he or she makes the copy of the paper record available, that the estimated charges will exceed the charges detailed in the written itemized statement by 20 percent or more, the Clerk must send to the requestor an updated itemized statement that details all estimated charges that will be imposed. If the requestor does not timely respond to the updated estimate, the request will be considered to have been withdrawn by the requestor.

If the actual charges that the Clerk imposes exceed $40.00, then the charges may not exceed the amount estimated in the updated itemized statement, or, if an updated itemized statement is not sent, an amount that exceeds by 20 percent or more the amount estimated in the itemized statement.

A County Clerk may require a deposit or a bond for payment of anticipated costs for the preparation of a copy of public information if the Clerk has provided the requestor with the written itemized statement required under Section 552.2615 detailing the estimated charge for providing the copy and the charge for providing the copy is estimated to exceed $100 (if the Clerk has more than 15 full-time employees) or $50.00 if the Clerk has fewer than 16 full-time employees).

A request is considered withdrawn if a deposit or bond, as set forth above, is not made before the 10th business day after the date the Clerk required it.

Gov't Code Sec. 552.263

APPENDIX A

TEXAS ATTORNEY GENERAL OPINIONS, LETTER OPINIONS AND OPEN RECORD DECISIONS

In most cases, an opinion that is designated by the initials of the attorney general addresses issues that are or may be of interest to persons throughout the state. A letter opinion generally addresses issues that are local in nature or that affect the interests of a particular person or group. An Open Record Decision refers to a decision issued in response to an inquiry related to open records requests. The "LO," "ORD," "OR," and "ORL" designations do not mean that a document is any less authoritative than one denominated by the particular attorney general's initials.

On January 4, 1999, Attorney General John Cornyn discontinued the practice of issuing letter opinions. All attorney general opinions are now issued under the Attorney General's initials; i.e., Attorney General Greg Abbott's opinions would be named GA-0001, GA-0002, etc.

As in previous versions of this manual, the Office of Court Administration is not providing copies of the Attorney General opinions cited. The summary which follows shows the opinion number, the chapter and page on which it is cited, and the issue presented. There are several other ways to obtain a copy of an Attorney general opinion.

You may obtain an electronic copy directly from the Office of the Attorney General's web site (https://www.oag.state.tx.us/opin/). All opinions issued since January 4, 1939, all letter opinions issued since January 21, 1953 and all open records decisions issued since July 20, 1973 are online. If you do not have internet access, or if you would like a copy of an opinion that is not online, you may call the Opinions Library at the Attorney General's Office at 512/936-1730 and request that they fax or mail you a copy. You may also subscribe to the Notification of Opinions subscription list to receive an e-mail alert regarding newly issued Attorney General Opinions by following the directions on this webpage: https://www.oag.state.tx.us/newspubs/subscriptions.shtml.

WHO CAN REQUEST AN ATTORNEY GENERAL OPINION?

Sections 402.042 and 402.043 of the Government Code set out the state and local officials who are authorized to request formal Attorney General opinions on questions of law. The Attorney General is prohibited by statute from giving a written opinion to anyone other than an authorized requestor. Authorized requestors are:

- the Governor
- the head of a department of state government
- the head or board of a penal institution
- the head or board of an eleemosynary institution
- the head of a state board
- a regent or trustee of a state education institution

- a committee of a house of the Texas Legislature
- a county auditor authorized by law
- the chairman of the governing board of a river authority

The Attorney General shall also advise a district or county attorney in certain instances in which the State is interested and certain requirements are met. In addition, the Attorney General shall advise the proper authorities in regard to the issuance of bonds that by law require the Attorney General's approval.

LEGAL EFFECT OF OPINIONS

The appellate courts of Texas have consistently held that attorney general opinions, although not binding on the courts, are entitled to "great weight." An opinion of the Attorney General should be deemed to state the law correctly, unless or until the opinion is modified or overruled by statute, judicial decision, or subsequent attorney general opinion.

Opinion	Issue Presented
C-637 (1966)	Payment of certain witness fees (party responsible for submitting claim to the Office of the Comptroller).
DM-26 (1992)	Fees payable to county and district clerks in eminent domain cases and when fees are payable by state agency.
DM-30 (1991)	County clerk's duty to provide duplicate microfilm of county real estate and deed records.
DM-41 (1991)	Whether a person requesting records pursuant to the Texas Open Records Act may dictate the media in which public information must be provided and related questions.
DM-146 (1992)	Whether the San Antonio Metropolitan Health District may limit public access to and charge a search fee for locating birth and death records which are made public by the Open Records Act.
DM-166 (1992)	Whether charges for uncertified copies of records of judiciary in district clerk's office are set by section 9(d) of article 62.52-17a, V.T.C.S.
DM-174 (1992)	Authority of county clerk to charge fees under section 31.008, Civil Practice and Remedies Code, and related questions.
DM-283 (1994)	Whether section 291.007 of the Local Government Code authorizes a county commissioners court to set a security fee of not more than five dollars to be taxed as court costs in each civil case filed in a probate court, as well as in a county court, county court at law, and district court and related questions.
DM-371 (1995)	Whether Attorney General Opinion DM-283 correctly determined that a county clerk may collect a security fee, as authorized by section 291.008 of the Local Government Code, at the time of filing a birth, death, or fetal death record and related questions. **[may be collected as county clerk, not as local registrar]**
DM-382 (1996)	Whether a district clerk may require an advance deposit of fees for service of process by a sheriff or constable; whether deferred collection of the fee for service of civil process by a sheriff or constable constitutes a loan of credit under article III, section 52, or article XI, section 3, of the Texas Constitution.
DM-459 (1997)	Whether the State of Texas is exempted from paying filing fees and other court costs prior to judgment; reconsideration of AG Opinion MW-447A (1982) [reaffirmed]
DM-492 (1998)	Whether the commissioners court or the county clerk is authorized to control the expenditure of records management and preservation fees collected under Local Government Code section 118.0216 and related questions.
GA-0118 (2003)	Whether records management and preservation fees collected under section 118.011(b)(2), Local Government Code, may be used to pay salaries in the county clerk's office.
GA-0404 (2006)	Whether the seal placed on certified copies of documents recorded in the county clerk's office must be raised.
GA-0486 (2006)	Effect of judgment nisi in bond forfeiture cases.
GA-0702 (2009)	Indexing certain real-property instruments under Chapter 193 of the Local Government Code.
GA-0714 (2009)	Authority of a county to contract with a private entity for the collection of delinquent fines, fees and court costs.
GA-0733 (2009)	Effect of a final conviction for a felony or misdemeanor crime involving moral turpitude on a notary public's application or commission.
GA-0778 (2010)	Whether a commissioners court may amend the county budget to reduce salaries for the county clerk's office because the clerk closed her office temporarily for a weather-related emergency.
GA-0884 (2011)	Appointment of counsel in criminal cases for non-indigent defendants.

Opinion	Issue Presented
GA-0886 (2011)	Whether Chapter 603, Texas Government Code, is applicable to notaries public.
GA-0915 (2012)	Whether a county clerk must allow the public to copy records with a sheet-feed scanner.
GA-0929 (2012)	Authority of a commissioners court to remove salary increases for county officials at the final budget hearing, and the effect of that removal on the grievance process.
GA-0939 (2012)	Whether a commissioners court may employ a county elections administrator to perform the duties of a 9-1-1 addressing agent and to assist in the preparation of redistricting maps.
GA-0960 (2012)	Refund of cash bail bonds under article 17.02, Code of Criminal Procedure.
H-199 (1974)	The method of determining the number of qualified voters for the purposes of a local option petition in a town that is smaller than a voting precinct.
H-410 (1974)	Authority of county clerk to issue certified copy of letters testamentary after estate has been closed.
H-826 (1976)	Whether court records pertaining to certain types of cases affecting the parent-child relationship are confidential.
JC-0031 (1999)	Whether section 113.022 of the Local Government Code, which requires a county officer who receives funds to deposit the funds with the county treasurer within certain time limits, applies to court fees collected by a district clerk.
JC-0156 (1999)	Whether a county clerk must accept for filing a "declaration of domestic partnership."
JC-0259 (2000)	Whether a recent amendment to article 42.01, section 2 of the Code of Criminal Procedure precludes a court clerk from preparing a judgment.
JC-0292 (2000)	Whether the $1 fee that a county clerk charges to issue "a noncertified copy of a page or part of a page of a document" (Local Government Code section 118.011(a)(4)) includes the cost of locating requested information that is no more than fifty pages long, and related questions.
JC-0323 (2001)	Whether a county clerk must file-stamp an instrument immediately upon its delivery and acceptance for filing, and related questions.
JC-0526 (2002)	Duties of the county clerk with regard to financing statement filings.
JM-223 (1984)	County clerk's fee for filing and recording a certificate of service under the probate code.
JM-260 (1985)	Availability of information from mental health records.
JM-318 (1985)	Disposition of appeals from justice of the peace courts under article 1970-31.2, V.T.C.S.
JM-373 (1985)	Authority of a county and/or district clerk to affix a judge's signature to a judgment in a criminal case.
JM-383 (1985)	Whether county funds must be deposited in a designated county depository.
JM-397 (1985)	When a county treasurer is required to deposit funds under article 1709a, V.T.C.S., and related questions.
JM-409 (1985)	Whether court costs and attorney fees may be excluded in determing the "amount in controversy" in justice and county courts.
JM-533 (1986)	Whether a county clerk may delivery the services of his office on credit. [**see JM-1229; overruled if inconsistent]**
JM-727 (1987)	Duty of the district clerk to file and docket improperly tendered documents.
JM-757 (1987)	Right of an individual to copy and reproduce public records in a district or county clerk's office.

Opinion	Issue Presented
JM-779 (1987)	Whether a district attorney is required to reimburse a county clerk for services rendered pursuant to a bond forfeiture proceeding.
JM-832 (1987)	The selection and qualification of depositories for the funds of River Authorities.
JM-882 (1988)	Whether the signature of the county auditor and/or county treasurer is required for withdrawal of money from a trust fund account administered by a county or district clerk.
JM-883 (1988)	Requirements of acknowledgment and jurat in instruments recorded by a county clerk.
JM-890 (1988)	Whether a contract for microfilming of records of county clerks office is subject to competitive bidding.
JM-928 (1988)	Selection of a depository by a hospital authority.
JM-1092 (1989)	Liability of the members of the board of directors of the Texas Agricultural Finance Authority (re: employee status).
JM-1029	Whether an abstract of judgment must meet the requirements of section 12.012 of the Property Code.
JM-1143 (1990)	Whether a county clerk must make available to the public tapes of commissioners court meetings.
JM-1229 (1990)	Whether county of state may provide goods to patron prior to receipt of payment (reconsideration of AG opinion MW-461)
L.O. 97-082 (1997)	Computer signature on arrest warrants and affidavits.
L.O. 98-016 (1998)	Instruments that the county clerk must accept for filing and recording.
M-547 (1970)	The meaning of the phrase "the substance only of depositions shall be recorded" as employed in Section 15 of the Texas Probate Code.
MW-298 (1981)	Whether section 53.06 of the Family Code requires service of summons on the parents of a married juvenile.
MW-396 (1981)	Filing fees for federal tax liens.
O-637 (1939)	May county clerk adopt photostatic method of recording written instruments.
OR 2001-2485	Whether certain information regarding minors receiving abortions without parental notification through the judicial approval process is subject to public disclosure.
OR 2002-2558	Whether certain information regarding appointment of attorneys to represent minors under the Parental Notification Act is subject to public disclosure.
OR 2002-3007	Whether certain information regarding payment to attorneys in cases under the Parental Notification Act is subject to public disclosure.
ORD-274 (1981)	Whether summons and complaints issued by police department to persons violating traffic regulations are open to the public.
ORD-481 (1987)	Whether Open Records Act, article 6252-17a, V.T.C.S., allows Dallas/Fort Worth International Airport Board to deny request submitted by unsuccessful applicant for employment for access to information concerning his application.

COUNTY CLERK PROCEDURE MANUAL

FORMS

2013 Edition

Form Number	Form Name
II-1	Certificate of Acknowledgment
II-2	Jurat
II-3	Recording Certificate
III-1	Order Directing the Form of the Appellate Record in Criminal Cases
IV-1	Letter Acknowledging Receipt of Appeal from Justice of the Peace Court
IV-2	Notice of Filing Foreign Judgment
IV-3	Order Directing the Form of the Appellate Record in Civil Cases
V-1	Notice of Claim Against Estate
V-2	Abstract for Application for Probate Action
VII-1	Uniform Commercial Code Rejection Letter
VIII-1	Affidavit of Absent Applicant
VIII-2	Declaration in Support of Proxy
X-1	List of Jurors Names Drawn from Jury Wheel
X-2	Request for Exemption due to Physical Impairment
X-3	Request for Exemption due to Mental Impairment
X-4	Request for Exemption due to English Language Inability
X-5	Order Granting Juror Exemption
X-6	Request for Postponement of Jury Service
X-7	Defendant's Jury List
X-8	State's/Plaintiff's Jury List
X-9	List of Jurors Chosen
X-10	Juror Donation Form
XIV-1	Court’s Request for Criminal History Report

COUNTY CLERK REPORTING REQUIREMENTS

December 2013

*****County Courts at Law have jurisdiction which varies widely throughout our state. The jurisdiction granted to some CCL's includes matters which are generally handled by district courts. Each County Clerk should be very familiar with the jurisdiction granted to the County Courts at Law in the county served by the Clerk in order to correctly determine which of the reporting requirements listed below apply to the Clerk.**

No.	Item Reported	Report Name	Report Recipient & Address	Form No. & Contact Info	Time Reported	Legal Citation	Notes
1	**Adoption** Decree	Certificate of Adoption	Texas Department of State Health Services – Vital Statistics Unit P.O. Box 12040 Austin, TX 78711-2040	VS-160 www.dshs.state.tx.us/vs/reqproc/forms/vs160.pdf (888) 963-7111	Not later than the 10th day of the first month after the month in which the adoption is rendered.	Family Code, § 108.003 Health & Safety Code § 192.009	Clerk to transmit a certified report of adoption using a VS-160 form.
2	Appeal of decision of the Texas **Workers' Compensation** Commission (TWCC) where one of the parties is the State of Texas or a listed Texas state actor		Texas Workers' Compensation Commission–Hearing Division 7551 Metro Center Dr. #100 Austin, TX 78744	(512) 804-4055	Not later than the 20th day after the date the suit is filed must send the notice Not later than the 20th day after the date the judgment is rendered must send certified copy of the judgment	Labor Code §§ 501.022, 501.050, 502.069, 503.069, 505.059	Clerk must mail a "notice" to the TWCC giving the case style, case number, and date the case was filed. The listed Texas state actors (in addition to the State of Texas itself) are: (1) Texas A & M University System; (2) University of Texas System; (3) Texas Tech University or Texas Tech University Health Sciences Center; (4) State Employees' Workers' Compensation Fund; and (5) Texas Department of Transportation. The clerk may not assess any fee for making the notification. A clerk who does not comply with this notice requirement commits a misdemeanor offense.
3	**Child Support** Order	Information on Suit Affecting the Family Relationship (Excluding Adoptions)	Texas Vital Statistics 1100 W. 49th Street Austin, TX 78756-3191	VS-165 www.dshs.state.tx.us/vs/sapcr/default.shtm (888) 963-7111 ext. 2549 registrar@dshs.state.tx.us	No stated time frame	Family Code § 105.008	Clerk shall provide a record of a court order for child support. VS-165 form must be used. To the extent possible, the Title IV-D agency is to reimburse the clerk for costs incurred in providing the record.
4	Court Order – Chemical Dependency Treatment **And** Expiration of Order of Involuntary Treatment of a Chemically-Dependent Person		Texas Department of Public Safety Driver Improvement Bureau P.O. Box 4087 Austin, TX 78773-0361	(512) 424-5720	Before the 10th day after the date the court enters the order Before the 10th day after the date of the expiration of the order.	Transportation Code § 521.319 Transportation Code § 521.319	Clerk must notify DPS of the court order so that DPS may revoke the driver's license of the person who is the subject of the order. Clerk must notify DPS that order of involuntary treatment for chemical dependency has expired.
5	Court Order – Incapacitation to Act as the Operator of a Motor Vehicle or Judgment of Total Incapacitation		Texas Department of Public Safety Driver Improvement Bureau P.O. Box 4087 Austin, TX 78773-0361	(512) 424-5720	Before the 10th day after the date the court renders the order or judgment.	Transportation Code § 521.319	Clerk must notify DPS of court's order/judgment so that DPS may revoke the driver's license of the person who is the subject of the order/judgment.
6	Court Order – Restoring a Person's Capacity		Texas Department of Public Safety Driver Improvement Bureau P.O. Box 4087 Austin, TX 78773-0361	(512) 424-5720	Before the 10th day after the date the person is restored to capacity.	Transportation Code § 521.319	Clerk must notify DPS of the fact that a person has had his or her capacity restored so that DPS will know that the revocation of the person's driver's license has expired.
7	Court Order – Person Released from Hospital for the Mentally Incapacitated		Texas Department of Public Safety Driver Improvement Bureau P.O. Box 4087 Austin, TX 78773-0361	(512) 424-5720	Before the 10th day after the release of the person from the hospital.	Transportation Code § 521.319	Clerk must notify DPS of release of person from hospital for the mentally incapacitated on a certificate of the superintendent or administrator that the person has regained capacity

No.	Item Reported	Report Name	Report Recipient & Address	Form No. & Contact Info	Time Reported	Legal Citation	Notes
8	Court Order – **releasing defendant sentenced to TDCJ on community supervision** before the 180th day after execution of sentence begins when offender is under bench warrant and not physically imprisoned in Institutional Division		Texas Department of Criminal Justice Correctional Institutions Division P.O. Box 99 Huntsville, TX 77342	(936) 437-2169 Fax: (936) 437-6325	Not later than the 7th day after the date of the defendant's release	Code of Criminal Procedure, art. 42.12, Section 6(a) Code of Criminal Procedure, art. 60.08(e)	The clerk is to "report" the release. No specific manner of reporting is mandated.
9	Court Order – **releasing person acquitted by reason of insanity** from mental hospital on regimen of outpatient care or on discharge from mental hospital		Crime victim or the victim's guardian or close relative		No stated time frame, but implication is immediately after the issuance of the order.	Code of Criminal Procedure, art. 46C.003 (HB 2124)	Clerk is to notify the victim or the victim's guardian or the victim's close relative of the release of the person's release from the mental hospital.
10	**Criminal Case** Disposition	Criminal History Reporting Form	Texas Department of Public Safety Crime Record Service P.O. Box 4143 Austin, TX 78765-4143	CR-43	Not later than the 30th day after the date on which the clerk receives the case disposition	Code of Criminal Procedure, art. 60.08	The clerk shall report the disposition of the case to the DPS. The DPS provides training on how to complete this form.
11	Criminal Conviction - **automatic suspension of driver's license** required and license surrendered to court	Notice of Convictions	Texas Department of Public Safety Driver Improvement Bureau P.O. Box 4087 Austin, TX 78773-0001	DIC-17 (512) 424-5720	Not later than the 10th day after the date on which the driver's license is surrendered to the court	Transportation Code § 521.347(a)	The court in which a person is convicted of an offense requiring automatic suspension of the person's driver's license "may" require the person to surrender his or her license to the court. If the license is surrendered to the court, then the clerk must send the license to the DPS along with completed Form DIC-17.
12	Criminal Conviction – Juvenile Adjudication, Deferred Disposition or Acquittal – Alcoholic Beverage Code Chapter 106 offense (minors and alcohol)		Texas Department of Public Safety Driver Improvement Bureau P.O. Box 4087 Austin, TX 78773-0001	(512) 424-5720	No stated time frame	Alcoholic Beverage Code § 106.117	Clerk is to send to DPS a notice of each conviction of an offense under Chapter 106 of the Alcoholic Beverage Code which deals with offenses involving alcohol and minors. Clerk is also to send DPS a notice of each juvenile adjudication, deferred disposition order or acquittal of an offense under Chapter 106.
13	Criminal Conviction - negligent homicide or other felony in which **vehicle was used**	Notice of Convictions	Texas Department of Public Safety Driver Improvement Bureau P.O. Box 4087 Austin, TX 78773-0001	DIC-17	Not later than the 7th day after the date of conviction	Transportation Code §§ 543.202, 543.203	Clerk is to submit to the DPS a written record of the case containing the information set out in Transportation Code § 543.202. Use DPS form
14	Criminal Conviction (or grant of deferred adjudication) for certain offenses committed by certified **teacher**		Texas State Board for Educator Certification 1701 North Congress Ave WBT 5-100 Austin, TX 78701-1494		Not later than the fifth day after the date the teacher is convicted or is granted deferred adjudication	Code of Criminal Procedure, art. 42.018	Clerk is to provide the State Board for Educator Certification with written notice of the teacher's conviction or deferred adjudication.
15	Criminal Conviction (or grant of deferred adjudication) for certain offenses committed by licensed **nurse**		Texas Board of Nurse Examiners 333 Guadalupe 3-460 Austin, TX 78701	(512) 305-7400	Not later than the 30th day after conviction	Occupations Code § 301.409	Attorney representing the State "shall cause the clerk" to prepare and forward to the Board "a certified true and correct abstract of the court record of the case."

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16	Criminal Conviction (or grant of deferred adjudication) for certain offenses committed by **person licensed by Texas Department of Insurance**		Texas Department of Insurance Agent Licensing Division Mail Code 107-1A P.O. Box 149104 Austin, TX 78714-9104		Not later than the fifth day after the conviction or grant of deferred adjudication	Code of Criminal Procedure, art. 42.0181	Clerk is to provide the Department of Insurance with written notice of the person's conviction of, or deferred adjudication for, an offense under Penal Code Chapters 31 (theft), 32 (fraud), 34 (money laundering), or 35 (insurance fraud).
17	Criminal Conviction (or grant of deferred adjudication) for certain offenses committed by **physician**		Texas Department of Public Safety Crime Records Service PO Box 4143 Austin, TX 78765-4143		Not later than the 30th day after the conviction or grant of deferred adjudication	Occupations Code § 160.101	Clerk is to prepare and forward the information required by Chapter 60, Code of Criminal Procedure. *See* Article 60.051.
18	Criminal Conviction (or grant of deferred adjudication) for felony by **"illegal criminal alien"**		Immigration and Naturalization Service (INS)		No stated time frame	Code of Criminal Procedure, art. 2.25	"Judge" is to report to INS. As a practical matter, however, the clerk should make this report. In some counties the sheriff's department or the CSCD make this report –if this is not ideal.
19	Criminal Conviction (or grant of deferred adjudication) for offense constituting family violence or offense under Title 5, Penal Code (criminal homicide, kidnapping, human trafficking, sexual offenses and assaultive offenses in certain circumstances		Staff Judge Advocate at Joint Force Headquarters or the provost marshal of the military installation to which the defendant is assigned.		No stated time frame, but implication is immediately after issuance of the order.	Code of Criminal Procedure, art. 42.0183	This reporting requirement applies only if the respondent is a member of the state military forces or is serving in the U.S. armed forces in an active duty status.
20	Criminal Conviction (or grant of deferred adjudication) or juvenile adjudication for offense requiring **registration as a sex offender**		Texas Department of Public Safety Driver Improvement Bureau P.O. Box 4087 Austin, TX 78773-0001	(512) 424-5720	No stated time frame	Code of Criminal Procedure, art. 42.016	Clerk is to send to DPS a copy of the record of conviction, a copy of the order granting deferred adjudication, or a copy of the juvenile adjudication, and a copy of the court order requiring the DPS to include sex offender information in a driver's license record.
21	Criminal Conviction (or placement on community supervision) -felony committed by **law enforcement officer** licensed by the Texas Commission on Law Enforcement		Texas Commission on Law Enforcement 6330 U.S. Hwy. 290 E. Austin, TX 78723		No stated time frame, but basically upon the order being received by the clerk	Code of Criminal Procedure, art. 42.011	Clerk is to send (either electronically or by mail) the person's license number and a certified copy of the judgment. Article 42.022 refers to individuals licensed under Government Code, Chapter 415 (but now see Occupations Code, Chapter 1701). NOTE: Senate Bill 686 (83rd Leg) changed the name of the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) to the Texas Commission on Law Enforcement.
22	**Daily Deposit** of Funds		County Treasurer		Daily	Local Government Code 113.022	The Clerk must on or before the next regular business day after the date on which the funds are received deposit with the County Treasurer.
23	**Death Certificate Abstract**		County Voter Registrar		Not later than the 10th day of the month following the month in which the abstract was prepared.	Election Code § 16.001(a)	Local registrar shall prepare an abstract of each death certificate issued in the month for a decedent 18 years of age or older who was a resident of the state at the time of death. This is a requirement only if the clerk is designated as the local registrar. For a list of local registrars see: www.dshs.state.tx.us/vs/field/localremotedistrict.shtm#local.

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24	**Divorce** or Annulment granted	Information on Suit Affecting the Family Relationship (Excluding Adoptions)	Texas Department of State Health Services – Vital Statistics Unit P.O. Box 12040 Austin, TX 78711-2040	VS-165 www.dshs.state.tx.us/vs/sapcr/default.shtm (888) 963-7111 ext. 2549 registrar@dshs.state.tx.us	Not later than the 9th day of the month after the month the divorce or annulment was granted	Health & Safety Code § 194.002	Clerk must file a completed report for each divorce or annulment granted in the district court. For each report that is filed, the clerk may collect $1 as costs in the case in which the divorce or annulment was granted.
25	**DNA Test Results** – when court has ordered DNA testing of evidence containing biological material of person already convicted		Texas Department of Public Safety Crime Record Service P.O. Box 4143 Austin, TX 78765-4143	(512) 424-2105	Not later than the 30th day after the conclusion of a proceeding wherein a convicted defendant seeks DNA testing under Chapter 64 of the Code of Criminal Procedure.	Code of Criminal Procedure, art. 64.03	Clerk is to forward DNA test results to the DPS in cases where the testing is conducted by a laboratory other than a DPS laboratory or a laboratory operating under a contract with the DPS.
26	Exemplary Damage Award against a **nursing home** or nursing home officer, employee or agent		Director of Central Operations, Long Term Regulatory Texas Department of Aging and Disability Services (Mail Code E-341) P.O. Box 149030 Austin, TX 78714		No stated time frame. The presumption is that this notice should occur shortly after the award of exemplary damages.	Health & Safety Code § 242.051	Clerk is to notify the Texas Department of Human Services if exemplary damages are awarded against a nursing home (or an officer, employee or agent of a nursing home) pursuant to Civil Practice & Remedies Code, Chapter 41.
27	**Expunction** Order		Texas Department of Public Safety PO Box 4143 Austin, TX 78765-4143 Attn: Expunctions	expunctions@txdps.state.tx.us	When the order of expunction is final	Code of Criminal Procedure, art 55.02, Sec. 3(c)	Clerk must send certified copy of an expunction order to the Crime Records Service of DPS and to each official or agency or other governmental entity or political subdivision designated by the person who is the subject of the order. Must be sent by secure electronic mail, electronic transmission, fax or certified mail, return receipt requested.
28	**Federal Prohibited Person** Information		Texas Department of Public Safety		Not later than the 30th day after the relevant court order	Government Code §§ 411.052, 411.0521	Clerk must prepare and forward to DPS certain information in Government Code § 411.0521(b) when the court: (1) orders a person to receive inpatient mental health services; (2) acquits a person in a criminal case by reason of insanity or lack of mental responsibility; (3) commits a person determined to have mental retardation; (4) Appoints a guardian for an incapacitated adult; (5) determines a person is incompetent to stand trial; or (6) finds a person is entitled to relief from a firearms disability. NOTE: Not later than 09/01/10, clerk shall forward information for court orders issued between 09/01/89 and 08/31/09.
29	Fees ordered to be paid to **court-appointed individuals** in civil cases	Official District Court Appointments and Fees Report	Supreme Court of Texas Office of Court Administration P.O. Box 12066 Austin, TX 78711	(512) 463-1625	Monthly. Not later than the 20th day of the month following the month reported	Supreme Court Order No. 94-9143 Government Code § 71.035(b)	Clerk is to report each fee of $500 or more approved or paid during the month. Fees of less than $500 may be reported, but are not required to be reported.
30	**Forfeiture of Bail** where defendant is charged with negligent homicide or other felony where vehicle was used	Notice of Convictions	Texas Department of Public Safety Driver Improvement Bureau P.O, Box 4087 Austin, TX 78773-0001	DR-18	Not later than the 7th day after forfeiture of bail	Transportation Code §§ 543.201, 543.202, 543.203	Clerk is to submit to DPS a written record of the case containing the information set out in Transportation Code § 543.202. Use DPS form.
31	**Forfeiture of Corporation's Charter** – order forfeiting, appeal of order & disposition of appeal		Texas Secretary of State of Texas Administrative Unit P.O. Box 12887 Austin, TX 78711		"promptly" after the relevant court action	Tax Code § 171.304	If a district court forfeits a corporation's charter, the clerk is to mail a certified copy of the judgment to the Secretary of State. If an appeal is perfected, the clerk is to certify that fact to the Secretary of State. The clerk shall also certify any disposition of an appeal to the Secretary of State.

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32	**Guardians – Private Professional Guardians and Public Guardians Certification Requirement**		Guardianship Certification Board (until 8-31-14) Judicial Branch Certification Commission (beginning 9-1-14) c/o Office of Court Administration P.O. Box 12066 Austin, TX 78711		No stated time frame but implication is immediately on discovering the fact	Estates Code § 1104.256	Court must notify Guardianship Certification Board (or Judicial Branch Certification Commission after 9-1-14) if it finds an individual in noncompliance with certification terms, standards and rules regarding individuals who must be certified in order to serve as a guardian (i.e. a person serving as a guardian who is supposed to be certified but is not)
33	**Guardians – Programs Reporting To The County Clerk** **NOTE: The County Clerk does not send a copy of the report to the GCB because the program has already done so.**				The report which must be sent to the Guardianship Certification Board (or Judicial Branch Certification Commission after 9-1-14) is due not later than January 31st of each year. The copy which must be sent to the County Clerk should be sent at the same time the original report is sent to the GCB.	Estates Code § 1104.257	Each guardianship program operating in a county shall submit to the County Clerk a copy of the report that the program submitted to the Guardianship Certification Board (or Judicial Branch Certification Commission after 9-1-14). NOTE: The report must contain the name, address, and telephone number of individuals employed by, volunteering with, or contracting with each program to provide guardianship services to a ward or proposed ward.
34	**Guardians – Registered Private Professional Guardians**		Guardianship Certification Board (after 9-1-14 send to Judicial Branch Certification Commission) c/o Office of Court Administration P.O. Box 12066 Austin, TX 78711			Estates Code § 1104.306	Clerk must annually submit to the Guardianship Certification Board (after 9-1-14 to Judicial Branch Certification Commission)the names and business addresses of all private professional guardians who have satisfied the registration requirements set out in Estates Code Section 1104.306.
35	**Hate Crime** – request for affirmative finding	Report of a Request for a Hate Crime finding	Office of Court Administration P.O. 12066 Austin, TX 78711	www.courts.state.tx.us/oca/required.asp (512) 463-1625	Not later than the 30th day after the date judgment is entered in the case	Code of Criminal Procedure, art. 2.211	This report concerning requests for affirmative hate crime findings is part of the Official District Court Monthly Report that is sent to OCA. No other report is required.
36	**Interest** earned		Internal Revenue Service	1099-INT (866) 455-7438	File Copy A with IRS by March. Furnish Copy B to the Recipient by February. Keep Copy C for your file.	Local Government Code 117.003	If any funds deposited in the registry of the court are placed into an interest-bearing account, any person with a taxable interest in funds deposited to such account must submit appropriate tax forms and provide correct information to the district or county clerk so that the interest earned on such funds can be timely and appropriately reported to the IRS.
37	**Judgment of Mental Incompetency**		County Voter Registrar		Not later than the 10th day of the month in which the abstract is prepared	Election Code § 16.002	Each month the clerk must prepare an abstract of each final judgment of a court adjudging a Texas resident who is 18 years of age or older to be mentally incompetent.
38	Judgment rendered in case appealing a decision of the Texas **Workers' Compensation** Commission (TWCC) where one of the parties		Texas Workers' Compensation Commission – Hearing Division 7551 Metro Center Dr. #100 Austin, TX 78711-2757	(512) 804-4055	Not later than the 20th day after the date the judgment is rendered	Labor Code §§ 501.022; 501.050; 502.069; 503.069; 505.059	Clerk must mail a certified copy of the judgment to the TWCC. The listed Texas state actors (in addition to the State of Texas itself) are: (1) Texas A & M University System; (2) University of Texas System; (3) Texas Tech University or Texas Tech University Health Sciences Center; (4) State Employees' Workers' Compensation Fund; and (5) Texas Department of Transportation. The clerk may not assess any fee for making the notification. A clerk who does not comply with this notice requirement commits a misdemeanor offense

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	is the State of Texas or a listed Texas state actor						
39	**Judicial Bypass Suit** – Order for State to pay ad litems, court costs, and court reporters		Accounting Division Attn: Staff Service Officer Texas Department of State Health Services P.O. Box 149347 Austin, TX 78714-9347	(512)458-7111 ext. 3945	Not later than the 90th day after the date of a final ruling	Family Code § 33.007 Texas Parental Notification Rule 1.9(b)(2), (4)	Clerk must "direct" copy of court order to Comptroller who shall pay the amount ordered from funds appropriated to the Texas Department of State Health Services. But copy of order is actually sent to the Texas Department of State Health Services instead of to the Comptroller.
40	Jury charge and sentence in **capital case**		Office of Court Administration P.O. Box 12066 Austin, TX 78711	(512) 936-1358 www.courts.state.tx.us/oca/pdf/jury-instructions.pdf	Not later than the 30th day after the date the judgment of acquittal or conviction is entered	Government Code § 72.087	Clerk shall submit a written record of the case containing the contents of the trial court's charge to the jury and the sentence issued.
41	Jury Service - Disqualification because potential **juror not county resident**		County Voter Registrar		On the third business day of each month	Government Code § 62.114	Clerk shall maintain list of the name and address of each person who is excused or disqualified from jury service because the person is not a resident of the county. On the third business day of each month, the clerk sends a copy of the list to the voter registrar.
42	Jury Service - Disqualification because potential **juror not U.S. citizen**		County Voter Registrar, secretary of state, and county attorney or district attorney		On the third business day of each month	Government Code § 62.113 (HB 174)	Clerk shall maintain list of the name and address of each person who is excused or disqualified from jury service because the person is not a citizen of the United States. On the third business day of each month, the clerk sends a copy of the list to the voter registrar, the secretary of state, and the county or district attorney, as applicable, for an investigation of whether the person committed an offense under Section 13.007, Election Code, or other law.
43	**Jury Service - Exemption** ordered by District Court		County Voter Registrar		"promptly"	Government Code § 62.109 (SB 85)	Clerk is to notify county voter registrar of the name and address of a person exempted from jury service because of a physical or mental impairment or because of an inability to comprehend or communicate in English.
44	**Jury Service – Permanent Exemption Claimed by Person Over 70**		County Voter Registrar		"promptly"	Government Code § 62.107 (SB 85)	Clerk shall have a copy of the statement claiming a permanent exemption on the basis of age promptly delivered to the county voter registrar.
45	**Juvenile** Court Case Disposition		Department of Public Safety Crime Records Service P.O. Box 4143 Austin, TX 78765-4143		Not later than 30 days after the date the clerk receives notice of the disposition	Family Code § 58.110(c)	Clerk is to report disposition of juvenile case to DPS. HB 1435 (83rd Leg) removed the criminal penalty for a clerk who fails to report the disposition of a case.
46	**Mental Incompetency – Nurse found to be mentally incompetent by court**		Texas Board of Nurse Examiners 333Guadalupe Street Suite 3-460 Austin, TX 78701	(512) 305-7400	Note later than 30 days after the date the nurse is found to be mentally incompetent	Occupations Code § 301.409	Clerk to prepare and forward to the Board a certified true and correct abstract of the court record of the case.
47	**Mental Incompetency – Physician found to be mentally incompetent by court**		Texas State Board of Medical Examiners P.O. Box 2018 Austin, TX 78768-2018		Not later than the 30th day after the date a court finds that a physician is mentally ill or mentally incompetent	Occupations Code § 160.102	Clerk to prepare and forward to the Board a certified abstract of the record.
48	**Monthly Court Activity**	Official District Court Monthly Report	Office of Court Administration P.O. Box 12066 Austin, TX 78711	http://www.txcourts.gov/oca/required.asp (512) 463-1625	No later than the 20th day of the month following the month reported	Government Code § 71.035	Reporting may be done either on paper or electronically.
49	**Name Change** for Minor		Texas Department of State Health Services –Vital Statistics Unit P.O. Box 12040 Austin, TX 78711-2040			Family Code § 45.004(b)	If a child who is subject to the continuing jurisdiction of a court, the clerk is to transmit a copy of the minor's name change order.

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50	**Occupational Driver's License** Granted or Revoked		Texas Department of Public Safety Safety Responsibility P.O. Box 15999 Austin, TX 78761-5999		No stated time frame, but implication is immediately after issuance of the order	Transportation Code § 521.249	Clerk is to send certified copy of the petition and court order granting the occupational license. The order is to set out the judge's findings and restrictions in regard to issuance of the license. Similarly, if the court that granted the license subsequently revokes the license, the clerk must send a certified copy of the order.
51	Order of **Nondisclosure**		Texas Department of Public Safety P.O. Box 4143 Austin, TX 78765-4143 Attn: Expunctions	expunctions@txdps.state.tx.us	Not later than the 15th business day after the date an order of nondisclosure is issued	Government Code § 411.081	Clerk is to send to DPS all relevant criminal history record information contained either in (1) the order; or (2) a copy of the order. Clerk is to send the material by certified mail, return receipt requested, or secure electronic mail, electronic transmission, or fax. NOTE: Five bills from the 83rd Legislature made changes to Section 411.081 (HB 729-effective 6-14-13; SB 869-effective 6-14-13; SB 107-effective 9-1-13; SB 743-effective 9-1-13; and, SB 966-effective 9-1-14)
52	Order **Vacating a Protective Order**		Each individual who received a copy of the original protective order		No stated time frame, but implication is immediately after issuance of the order.	Family Code § 85.042 (c)	Notice must be given that the protective order has been vacated to each individual or entity who received a copy of the original or modified protective order from the clerk. NOTE: Two bills from the 83rd Legislature made changes to Section 85.042 (SB 355-effective 9-1-13 and HB 1435-effective 9-1-13)
53	**Paternity** Determination	Information on Suit Affecting the Family Relationship (Excluding Adoptions)	Texas Department of State Health Services – Vital Statistics Unit P.O. Box 12040 Austin, TX 78711-2040	VS-165 www.dshs.state.tx.us/vs/sapcr/default.shtm registrar@dshs.state.tx.us (888) 963-7111 ext. 2549	Immediately after order becomes final	Family Code § 108.008 Health & Safety Code § 192.0051	Clerk prepares report of each order determining paternity on designated form and sends to Vital Statistics.
54	Petition Filed – **occupational driver's license** sought where driver's license has been suspended for certain criminal offenses		Attorney representing the State		No stated time frame, but best practice would be immediately after petition is filed	Transportation Code § 521.243	Clerk must send a copy of petition and any notice of hearing "by certified mail" to attorney representing the state if the petitioner's license was suspended following a conviction for an offense under Sections 19.05, 49.04, 49.07 or 49.08 of the Penal Code or an offense to which Section 521.342 of the Transportation Code applies.
55	Petition or Motion **Challenging the Constitutionality** of a Texas Statute		Attorney General of Texas Const_claims@texasattorneygeneral.gov OCA form referenced in Subsection (a-1) www.courts.state.tx.us/pdf/Constitutionality.pdf		No stated time frame, but implication is immediately after petition or motion is filed.	Government Code, § 402.010 Amended in 83rd Legislature by SB 392 and HB 1435 – effective 9-1-13	In an action in which a party to the litigation files a petition, motion, or other pleading challenging the constitutionality of a Texas statute, the party shall file the form required by Subsection (a-1) which is a form adopted by OCA. If the Attorney General is not a party to or counsel involved in the suit, the court shall serve notice of the constitutional challenge on the Attorney General by either certified or registered mail or electronically to an e-mail address designated by the Attorney General for the purpose of this section along with a copy of the petition, motion or other pleading that raises the challenge.
56	Probate Application		County Voter Registrar		Not later than the 10th day of the month following the month in which the application was received (and the abstract was prepared).	Election Code § 16.001(b)	Clerk must prepare an abstract of each application for probate of a will, administration of a decedent's estate, or determination of heirship and each small estate affidavit and shall then file the abstract with the voter registrar.
57	**Protective Order**		See Notes		No stated time frame, but implication is immediately after issuance of the order.	Family Code § 85.042 (a), (a-1) Note: Two bills from the 83rd Legislature	Clerk shall send a copy of the order, along with the information provided by the applicant or the applicant's attorney that is required under Section 411.042(b) (6), Government Code, to the chief of police of the municipality in which the person protected by the order resides, if the person reside in a municipality; to the appropriate constable and the sheriff of the county in

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						amended Section 85.042 (SB 355 and HB 1435 – both effective 9-1-13)	which the person resides, if the person does not reside in a municipality; and to the Title IV-D agency, if the application for the protective order indicates that the applicant is receiving services from the Title IV-D agency. If the respondent is a member of the state military forces or is serving in the U.S. armed forces in an active-duty status and the applicant or the applicant's attorney provides to the clerk the mailing address of the staff judge advocate or provost marshall, as applicable, then the clerk shall also send a copy of the order and required information to the staff judge advocate at Joint Force Headquarters or the provost marshal of the military installation to which the respondent is assigned with the intent that the commanding officer will be notified.
58	Protective Order based on criminal defendant's commission of offense because of **bias or prejudice**		Regulatory Licensing Service MSC 0245 Texas Department of Public Safety PO Box 4087 Austin TX 78773-0245	chl@txdps.state.tx.us (512) 424-7293 (512) 424-7294 Helpline: (800) 224-5744		Code of Criminal Procedure, art. 6.08	Clerk is to send a copy of the order to the DPS "with a designation indicating that the order was issued to prevent offenses committed because of bias or prejudice."
59	**Protective Order** issued by court other than court where SAPCR and/or marriage dissolution suit is pending		Clerk of Court where SAPCR and/or marriage dissolution suit is pending		No stated time frame, but implication is immediately after the issuance of the order	Family Code § 85.062	Clerk is to send a copy of the protective order to the court in which the suit is pending.
60	Protective Order prohibiting respondent from going near a child-care facility or a **school**		Child-care facility and/or school		No stated time frame but implication is immediately after the issuance of the order	Family Code § 85.042	If the protective order prohibits the respondent from going near a child-care facility or a school, clerk is to send a copy of the protective order to the child-care facility or school. NOTE: Two bills from the 83rd Legislature amended Section 85.042 (SB 355 and HB 1435 – both effective 9-1-13)
61	Protective Order suspending a license to carry a **concealed handgun**		Regulatory Licensing Service MSC 0245 Texas Department of Public Safety PO Box 4087 Austin TX 78773-0245	chl@txdps.state.tx.us (512) 424-7293 or (512) 424-7294 Helpline: (800) 224-5744	No stated time frame; but implication is immediately after the issuance of the order	Family Code § 85.042	Clerk is to send a copy of the order to the DPS. NOTE: Two bills from the 83rd Legislature amended Section 85.042 (SB 355 and HB 1435 – both effective 9-1-13)
62	**SAPCR** –Court Order	Information on Suit Affecting the Family Relationship (Excluding Adoptions)	Texas Department of State Health Services – Vital Statistics Unit P.O. Box 12040 Austin, TX 78711-2040	VS-165 www.dshs.state.tx.us/vs/sapcr/default.shtm registrar@dshs.state.tx.us (888) 963-7111 ext. 2549	No stated time frame	Family Code § 108.001(a), (d)	This reporting requirement applies to any orders in SAPCR's that are not covered by a more specific reporting requirement. Clerk is to provide a certified record of any SAPCR order on a VS-165 form.
63	**SAPCR** –loss of court's jurisdiction	Information on Suit Affecting the Family Relationship (Excluding Adoptions)	Texas Department of State Health Services – Vital Statistics Unit P.O. Box 12040 Austin, TX 78711-2040	VS-165 http://www.dshs.state.tx.us/vs/sapcr/default.shtm registrar@dshs.state.tx.us (888) 963-7111 ext. 2549	Upon the loss of continuing, exclusive jurisdiction	Family Code § 108.004	The report is to be made if the court has lost continuing, exclusive jurisdiction of the case for any reason. The reason for the loss of jurisdiction is to be noted on the form. Clerk must transmit a certified record on the VS-165, stating that jurisdiction has been lost, the reason for the loss, the name and all previous names of child, and date and place of birth of the child.

No.	Item Reported	Report Name	Report Recipient & Address	Form No. & Contact Info	Time Reported	Legal Citation	Notes
64	**Suspension of license** for failure to pay child support or vacation or stay of suspension		Appropriate State licensing agency – all licensing agencies are subject to this requirement unless otherwise exempted		No stated time frame, but implication is immediately after the issuance of the order. If order is one of vacation or stay then "promptly."	Family Code §§ 232.002; 232.008; 232.013	Clerk is to forward a copy of the final order suspending a license to the appropriate licensing authority (*e.g.*, Texas Board of Barber Examiners, Texas State Board of Pharmacy). The clerk is to collect a fee of $5 from the child support obligor for each order mailed. NOTE: HB 1846 from the 83rd Legislature amended Section 232.008 by placing a condition on the power of the court to stay an order.
65	Unclaimed **Cash Bail Bonds**		Texas Comptroller of Public Accounts Unclaimed Property Division P.O. Box 12019 Austin, Texas 78711-2019	Elaine Walker, (512) 463-2059	On or before November 1st following the Clerk's annual June 30th review. NOTE: Beginning 01/01/13, the report must be made on or before July 1st following the Clerk's annual March 1st review.	Property Code §§ 72.101, 74.101 Melton v. State, 993 S.W.2d 95 (1999). (HB 257 – 82nd Legislature)	Clerk must review all cash bail bonds held by clerk each June 30. Any cash bail bonds that have been "dormant" for three years or more are considered to be abandoned property. The dormancy period begins to run three years from the date of entry of final judgment or order of dismissal in the action in which the funds were deposited. The clerk must report all cash bail bonds that are considered to be dormant to the Comptroller. NOTE: Beginning 01/01/13, the clerk must review all cash bail bonds held by clerk each March 1st.
66	**Unclaimed Funds** other than cash bail bonds		Texas State Comptroller Unclaimed Property Division Holder Reporting Section P.O. Box 12019 Austin, TX 78711-2019	Form 53-119 (800) 321-2274, ext. 6-6246 or in Austin, call (512) 936-6246	The report and the delivery must be made on or before November 1st following the Clerk's annual June 30th review. NOTE: Beginning 01/01/13, the report and the delivery must be made on or before July 1st following the Clerk's annual March 1st review.	Property Code §§ 72.101, 74.101, 74.301 Local Government Code 117.002 (HB 257 – 82nd Legislature)	Any funds deposited in the registry of the court, except cash bail bonds, that are presumed abandoned under Chapter 72, 73, or 75, Property Code, shall be reported and delivered to the comptroller without further action by any court. Property is presumed to be abandoned if, the property has remained unclaimed for 3 years and the owner has not communicated during the abandonment period and the location of the owner is unknown. The relevant time for determining if property has remained unclaimed for 3 years is June 30. NOTE: Beginning 01/01/13, the clerk must review property in the registry of the court on March 1to find property that is presumed to have been abandoned.
67	**Vexatious Litigant** prohibited from filing new litigation (Pre-Filing Order)		Office of Court Administration P.O. Box 12066 Austin, TX 78711 Attention: Judicial Information	(512) 463-1625	Not later than 30 days after the date the prefiling order is signed. (HB 79, Article 9 – First Called Session)	Civil Practice & Remedies Code § 11.104	Clerk is to provide a copy of any pre-filing order issued under Section 11.101 of the Civil Practice & Remedies Code. These pre-filing orders prohibit individuals found to be vexatious litigants from filing, in propria persona, new litigation. NOTE: Chapter 11 of the Civil Practice & Remedies Code was significantly amended in SB 1630 from the 83rd Legislature. Clerks should carefully review the changes.